

The Indian Factories Act, 1911.

(*Chapter V.—Special Provisions for Textile Factories. Chapter VI.—Notices and Registers.*)

29. (1) No person shall be employed in any textile factory before half-Limits between past five o'clock in the which a person may morning or after seven be employed. o'clock in the evening.

(2) Nothing in sub-section (1) shall apply to any person while employed in accordance with a system of shifts approved by the inspector.

30. (1) Nothing in section 28 or section 29 Exceptions from sec. shall apply to—
tions 28 and 29.

- (a) the work of calendering, finishing, sewing or tailoring, or
- (b) the work of cloth-printing, bleaching or dyeing, or
- (c) any work specified in Part A of Schedule I.

(2) Where it is proved to the satisfaction of the Local Government that any work not specified in Part A of Schedule I is of an urgent nature, or is such as in the interests of efficiency is commonly performed while the main manufacturing process of the factory is discontinued, the Local Government may, subject to the control of the Governor General in Council, by notification in the local official Gazette, exempt any person employed on such work from the operation of section 28 or section 29 on such conditions, if any, as it may impose.

31. (1) The period for which mechanical power Limit of use of or electrical power is used machinery. shall not in any one day exceed twelve hours.

(2) Nothing in sub-section (1) shall apply to any mechanical power or electrical power while being solely used in aid of the work performed by any person employed in accordance with a system of shifts approved by the inspector.

(3) Nothing in sub-section (1) shall apply to any mechanical power or electrical power required in connection with any work specified in sub-section (1) of section 30 or in connection with any work which is exempted by the Local Government under sub-section (2) of the same section.

32. No child shall be employed in any textile factory for more than six hours in any one day.

Limitation of hours of children.

CHAPTER VI.**NOTICES AND REGISTERS.**

Person occupying factory to give notice.

33. (1) Every person occupying a factory shall,—

- (a) in the case of existing factories, within one month after the commencement of this Act, or
- (b) in the case of a factory which starts work after the commencement of this Act, within one month after he begins to occupy the factory, send to the inspector a written notice containing
 - (i) the name of the factory and of the place where it is situate,

- (ii) the address to which he desires his letters to be directed,
- (iii) the nature of the work performed in such factory,
- (iv) the nature and amount of the moving power therein, and
- (v) the name of the person who shall be deemed to be the manager of the factory for the purposes of this Act:

Provided that in the case of a seasonal factory such notice shall be sent on or before the date of starting work for each season.

(2) If the manager of the factory is changed, the occupier shall send to the inspector, within seven days from the date on which the change is made, written notice of the change.

(3) During any period for which no person has been designated as manager of a factory under this section, the occupier shall himself be deemed to be the manager of the factory for the purposes of this Act.

34. When any accident occurs in a factory Notice to be given of causing death or bodily injury, whereby the person injured is prevented from

returning to his work in the factory during the forty-eight hours next after the occurrence of the accident, the manager shall send notice of the accident to such authorities in such form and within such time as may be prescribed.

35. In every factory there shall be kept, in the prescribed form, a Register of children. register of the children (if any) employed in such factory, and of the nature of their respective employment.

36. (1) There shall be affixed in some spurious place near the main entrance of every factory, in English and in

the language of the majority of the operatives in such factory, the prescribed abstracts of this Act and of the rules made thereunder, and also a notice containing the standing orders of the factory upon the following matters, namely:—

- (a) the time of beginning and ending work on each day;
- (b) the periods during which all work is discontinued under section 21;
- (c) the hours of beginning and ending work for each shift (if any); and
- (d) the hours of employment of women and children respectively, if not employed in shifts.

(2) A copy of the said notice shall be sent to the inspector within one month of the commencement of this Act, or, in the case of a factory which starts work after the commencement of this Act, within one month of commencing work.

(3) The said notice shall be correctly maintained and kept up to date, and intimation of any change therein shall be sent by the manager to the inspector within seven days.

(4) Nothing in this section, except in so far as it relates to affixing the prescribed abstracts of this Act and the rules made thereunder, shall apply to any seasonal factory.

*The Indian Factories Act, 1911.**(Chapter VII.—Rules. Chapter VIII.—Penalties and Procedure.)*

CHAPTER VII.

RULES.

37. (1) Subject to the control of the Governor General in Council, the Power to make rules. Local Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the inspection of factories;
- (b) the manner in which inspectors are to exercise the powers conferred on them by this Act;
- (c) the duties to be performed by certifying surgeons;
- (d) the form of the certificate prescribed by section 7, the grant of a duplicate in the event of loss of the original certificate, and the fee, if any, to be charged for such duplicate;
- (e) the methods, including lime-washing, painting, varnishing and washing, to be adopted in order to secure cleanliness and freedom from effluvia;
- (f) the proportion which the number of cubic feet of space in any room shall bear to the number of persons employed at one time therein;
- (g) standards of ventilation, and the methods to be adopted in order to secure their observance;
- (h) standards of latrine and urinal accommodation;
- (i) standards of water-supply;
- (j) the parts of the machinery to be kept fenced in accordance with section 18, sub-section (1), clause (c), and the provisions to be made for the protection from danger of persons employed in attending to the machinery or boilers;
- (k) the form of the notice prescribed by section 34, and the time within which and the authorities to whom it shall be sent;
- (l) the form of the register prescribed by section 35;
- (m) the abstracts of the Act and of the rules required by section 36;
- (n) the procedure to be followed in presenting and hearing appeals under this Act, including the appointment and remuneration of assessors; and
- (o) the manner of service of notices and orders upon occupiers or managers of factories.

38. The Governor General in Council may from time to time make Returns. rules requiring occupiers or managers of factories to furnish such returns, occasional or periodical, as may in his opinion be necessary for the effectual carrying out of this Act.

39. (1) The power to make rules conferred by Prior publication of section 37, except clauses rules. (k), (l) and (m) of sub-section (2) thereof, and by

section 38 is subject to the condition of the rules being made after previous publication.

(2) The date to be specified in accordance with clause (3) of section 23 of the General Clauses Act, 1897, as that after which a draft of rules X of 1897, proposed to be made under sections 37 and 38 will be taken into consideration, shall not be less than three months from the date on which the draft of the proposed rules was published for general information.

40. Rules made under this Chapter shall be published in the local official Gazette or the Gazette of India, as the case may be, and shall thereupon have effect as if enacted in this Act.

CHAPTER VIII.

PENALTIES AND PROCEDURE.

Penalties.

41. If in any factory—

- (a) any person is employed or allowed to work contrary to any of the provisions of this Act;
- (b) any of the provisions of section 9 are not complied with;
- (c) latrine or urinal accommodation in accordance with the provisions of section 13 is not provided;
- (d) a supply of water for the persons employed is not maintained in accordance with the provisions of section 14;
- (e) any door is constructed in contravention of section 15;
- (f) any of the provisions of section 18, sub-sections (1), (3) and (4), regarding fencing and the protection from danger of persons employed in attending to the machinery or boilers are not complied with;
- (g) any order of an inspector under section 10, section 11, section 12, section 16 or section 18 is not complied with;
- (h) the register prescribed by section 35 is not kept up to date;
- (i) any of the provisions of section 36 are not complied with;
- (j) any notice or return required by this Act or by rules made thereunder to be furnished is not furnished;

the occupier and manager shall be jointly and severally liable to a fine which may extend to two hundred rupees:

Provided that in cases where an appeal is allowed by section 50 no prosecution under clause (g) of this section shall be instituted until either the time prescribed by section 50 for the presentation of an appeal has expired or such appeal, if made, has been determined.

42. (1) Where the occupier or manager of a factory is charged with a offence against this Act, liability in certain cases. he shall be entitled upon complaint duly made by him

to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge; and if, after the commission of the offence has been

*The Indian Factories Act, 1911.**(Chapter VIII.—Penalties and Procedure. Chapter IX.—Supplemental Provisions.)*

proved, the occupier or manager of the factory proves to the satisfaction of the Court—

- (a) that he has used due diligence to enforce the execution of this Act, and
- (b) that the said other person committed the offence in question without his knowledge, consent or connivance,

that other person shall be convicted of the offence and shall be liable to the like fine as if he were the occupier or manager, and the occupier or manager shall be discharged from any liability under this Act.

(2) When it is made to appear to the satisfaction of the inspector at any time prior to the institution of the proceedings—

- (a) that the occupier or manager of the factory has used all due diligence to enforce the execution of this Act, and
- (b) by what person the offence has been committed, and
- (c) that it has been committed without the knowledge, consent or connivance of the occupier or manager, and in contravention of his orders,

the inspector shall proceed against the person whom he believes to be the actual offender without first proceeding against the occupier or manager of the factory, and such person shall be liable to the like fine as if he were the occupier or manager.

43. Any person who—*Penalties for certain offences.*

- (a) wilfully obstructs an inspector in the exercise of any power under section 5, or fails to produce, on demand by an inspector, any registers or other documents kept in pursuance of this Act or the rules made thereunder, or conceals or prevents or attempts to prevent any person employed in a factory from appearing before or being examined by an inspector;
- (b) smokes, or uses a naked light, or causes or permits any such light to be used, in the immediate vicinity of any inflammable material in contravention of section 17; or
- (c) does or omits to do any other act prohibited or prescribed by this Act or any order or rule made thereunder;

shall be punishable with fine which may extend to two hundred rupees.

44. Any person who knowingly uses or attempts to use, as a certificate granted to himself under section 7 or section 8, a certificate granted to another person under either of those sections, or who, having procured such a certificate, knowingly allows it to be used, or an attempt to use it to be made, by another person, shall be punishable with fine which may extend to twenty rupees.

45. A person shall not be liable in respect of a repetition of the same kind of offence from day to day to any larger amount

of fines than the highest fine fixed by this Act for the offence, except—

- (a) where the repetition of the offence occurs after a prosecution has been instituted in respect of the original offence, or
- (b) where the offence is one of employing or allowing to be employed two or more persons contrary to the provisions of this Act.

46. If a child over the age of six years is found inside any room or part of a factory in which employment.

room or part children are employed and in which any manufacturing process or work incidental to any manufacturing process is being carried on, he shall, until the contrary is proved, be deemed to be employed in the factory.

47. (1) When an act or omission would, if a person were under or over a certain age, be an offence punishable under this Act, and such person is in the opinion of the Court apparently under or over such age, it shall be on the accused to prove that such person is not under or over such age.

(2) A declaration in writing by a certifying surgeon that he has personally examined a person employed in a factory and believes him to be under or over the age set forth in such declaration shall, for the purposes of this Act, be admissible as evidence of the age of that person.

48. (1) No prosecution under this Act, except a prosecution under section Cognizance of 43, clause (b), shall be instituted except by or with the previous sanction of the inspector.

(2) No Court inferior to that of a Presidency Magistrate or of a Magistrate of the first class shall try any offence against this Act or any rule or order thereunder, other than an offence against section 43, clause (b).

49. No Court shall take cognizance of any offence against this Act or any rule or order thereunder, unless a complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

CHAPTER IX.**SUPPLEMENTAL PROVISIONS.**

50. (1) Any person on whom an order under section 10, section 11, section Appeals. 12, section 16 or section 18 has been served may, within fourteen days from the date of service of the order, appeal against such order to the Local Government or to such authority as it may appoint in this behalf, who may confirm, modify or reverse any such order.

(2) Where an inspector refuses to approve a system of shifts, he shall, if required by the manager of the factory, record his order of refusal with the reasons therefor, and the manager of the factory may, within fourteen days from the date of such order, appeal against it to the Local Government or to such authority as it may appoint in this behalf, who may confirm, modify or reverse any such order.

*The Indian Factories Act, 1911.**(Chapter IX.—Supplemental Provisions.)*

(3) In the case of any appeal under sub-section (1) the appellate authority may, and if so requested by the appellant in the petition of appeal shall, hear the appeal with the aid of two assessors, one of whom shall be appointed by the said authority and the other by such body representing the interest of the industry concerned as the Local Government may in this behalf prescribe:

Provided that if no assessor is appointed by such body within the prescribed period, or if the assessor so appointed fails to attend at the time and place fixed for the hearing of the appeal, the said authority may proceed to hear the appeal without the aid of such assessor, or, if it thinks fit, without the aid of any assessor.

51. (1) In respect of any area in which the hours of the day are not ordinarily reckoned according to time. Special provision of the day are not ordinarily reckoned according to time. local mean time, the times and hours referred to in section 2, sub-section (8), section 26 and section 36 shall be reckoned according to the standard of time ordinarily observed in such area.

(2) The Local Government may, by notification in the local official Gazette, direct that, for any specified area and during any specified months, for the morning and evening hours mentioned in section 23, clause (b), section 24, clause (a), and section 29, such one of the following sets of morning and evening hours, as it deems suitable, reckoned according to the standard of time ordinarily observed in such area, shall be substituted, namely:

five o'clock in the morning and half past six o'clock in the evening ;
six o'clock in the morning and half past seven o'clock in the evening ;
half past six o'clock in the morning and eight o'clock in the evening ;
seven o'clock in the morning and half past eight o'clock in the evening.

52. In computing the hours referred to in section 23, clause (c), section 24, clause (b), section 28 and section 32, any interval by

which work is interrupted for half an hour or more shall be excluded.

53. The Local Government may, subject to the control of the Governor Power to declare General in Council, by parts of a factory to be special order in writing, separate factories. direct, with respect to any factory or class of factories, that different branches or departments of work carried on in the same factory shall for all or any of the purposes of this Act be treated as if they were separate factories.

54. This Act shall apply to factories belonging to the Crown.

Application to Crown factories.

55. Notwithstanding anything in section 22, sub-section (1), any person Special provision for may in the province of Burma for employment Burma be employed on on Sunday. Sunday for any time not exceeding four hours in cleaning the machinery and apparatus in a factory, provided that he has not worked in the factory later than two o'clock in the afternoon on the previous day.

56. In case of any public emergency, the Local Government may, by an Power to exempt order in writing, exempt any from Act. factory from this Act to such extent and during such period as it thinks fit.

57. The Governor General in Council may, if he thinks fit, exercise any power which is by this Act conferred upon the Local Government.

58. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

59. The Indian Factories Act, 1881, and the XV of 1881. Indian Factories Act, 1891, XI of 1891. Repeal and savings. are hereby repealed :

Provide that all appointments made and all certificates given under the said Acts shall be deemed to have been made or given under this Act.

*The Indian Factories Act, 1911.**(Schedule I. Schedule II.)***SCHEDULE I.***(See sections 21, 22, 30.)***PART A.***[See sections 21 (2), (3); 22 (3); 30.]*

WORK OF AN URGENT NATURE OR, SUCH AS IN THE INTERESTS OF EFFICIENCY IS COMMONLY PERFORMED WHILE THE MAIN MANUFACTURING PROCESS OF THE FACTORY IS DISCONTINUED.

- (a) Work by the supervising staff, clerks, watchmen or messengers;
- (b) work in the mechanic shop, the smithy or foundry, the boiler-house, the engine-room or power-house, or in connection with the mill-gearing, the electric driving or lighting apparatus, mechanical or electrical lifts, or the steam or water pipes or pumps;
- (c) work on the cleaning of walls, ceilings or other portions of factory buildings, tanks, wells, humidifying or ventilating apparatus, tunnels, blow-room flues or line-shaft alleys or of galleries in ginning factories;
- (d) work by persons engaged in oiling, examining or repairing or in supervising or aiding in the oiling, examination or repair of any machinery or other thing whatsoever which is necessary for the carrying on of the work in a factory;
- Explanation.—* Periodical cleaning is not included in the terms "examining" or "repairing;"
- (e) work on the processes of packing, bundling or baling of finished articles or the receiving or despatching of goods.

PART B.*[See section 21 (2), (3).]*

WORK NECESSITATING CONTINUOUS PRODUCTION FOR TECHNICAL REASONS IN THE FOLLOWING FACTORIES, NAMELY :

- Tanneries.
- Sugar refineries.
- Breweries.
- Distilleries.
- Oil refineries.
- Oil mills.
- Cement works.
- Cloth-printing works.
- Bleaching and dyeing works.
- Carbonic acid gas works.
- Chemical works.
- Glass works.
- Paper mills.
- Shellac factories.
- Potteries.
- Blast furnaces, ore smelting works, or works for the manufacture of iron or steel or other metals.

PART C.*[See section 21 (2), (3).]*

FACTORIES WHICH BY REASON OF THE EXIGENCIES OR THE SPECIAL CIRCUMSTANCES OF THE TRADE CARRIED ON THEREIN REQUIRE AN UNINTERRUPTED WORKING DAY, NAMELY :

- Flour mills.
- Rice mills.
- Letter-press printing works.
- Dairies.
- Bakeries.
- Ice factories.
- The mints.
- Gas works.
- Air-compressor stations.
- Water works or water-supply pumping stations.

SCHEDULE II.*(See section 22.)***PART A.***[See section 22 (3), (4).]*

WORK NECESSITATING CONTINUOUS PRODUCTION FOR TECHNICAL REASONS IN THE FOLLOWING FACTORIES, NAMELY :

- Tanneries.
- Sugar refineries.
- Breweries.
- Distilleries.
- Oil refineries.
- Cement works.
- Carbonic acid gas works.
- Chemical works.
- Glass works.
- Shellac factories.
- Potteries.
- Blast furnaces, ore smelting works or works for the manufacture of iron or steel or other metals.

PART B.*[See section 22 (3), (4).]*

FACTORIES WHICH SUPPLY THE PUBLIC WITH ARTICLES OF PRIME NECESSITY WHICH MUST BE MADE OR SUPPLIED EVERY DAY, NAMELY :

- Ice factories.
- Dairies.
- Bakeries.
- Gas works.
- Air-compressor stations.
- Water-works or water-supply pumping stations.

M. MACPHERSON,
Secretary to the Government of India.



The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 28, 1911.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced in the Council of the Governor General of India for making Laws and Regulations, Reports of Select Committees presented to the Council, and Bills published under Rule 23.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill to amend the law relating to the protection of Inventions and Designs was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 24th January 1911:—

We, the undersigned, Members of the Select Committee to which the Bill to amend the law

From Agent to Governor General and Chief Commissioner, North-West Frontier Province, No. 968-G., dated 20th April 1910 [Paper No. 1].

From Agent to Governor General and Chief Commissioner in Baluchistan, No. 1937, dated 9th May 1910 [Paper No. 2].

From Chief Commissioner, Coorg, No. 1042, dated 14th May 1910 [Paper No. 3].

From Chief Commissioner, Central Provinces, No. 614-VIII-101, dated 16th May 1910, and enclosures [Papers No. 4].

From Secretary and Registrar, Chartered Institute of Patent Agents, dated 8th June 1910 and 18th December 1908 [Papers No. 5].

From Comptroller General of Patents, Designs and Trade Marks, United Kingdom, dated 1st July 1910 [Papers No. 6].

From Government, Bombay, No. 3613, dated 1st August 1910, and enclosures [Papers No. 7].

From Chief Commissioner, Ajmer-Merwara, No. 801, dated 10th June 1910; from High Court, Calcutta, No. 2654, dated 9th August 1910 [Papers No. 8].

From Government, Punjab, No. 565 C. & I., dated 30th July 1910, and enclosures [Papers No. 9].

From Government, Madras, No. 731, dated 13th August 1910, and enclosures [Papers No. 10].

From Government, Eastern Bengal and Assam, No. 103 J. L., dated 16th July 1910; from Government, Burma, No. 1184-M-9 P-5, dated 21st July 1910; from Government, United Provinces, No. 983, dated 26th July 1910, and enclosures [Papers No. 11].

From Government, Bengal, No. 3337, dated 31st August 1910, and enclosures [Papers No. 12].

From Government, Madras, No. 827, dated 10th September 1910, and enclosure [Papers No. 13].

From Government, Bombay, No. 5232, dated 26th October 1910, and enclosure [Papers No. 14].

From the Hon'ble Mr. W. C. Madge, dated 4th January 1911 [Papers No. 15].

relating to the protection of Inventions and Designs was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

2. *Clause 1.*—We propose that the Act should come into force on the 1st of January 1912.

3. *Clause 2(7).*—We have restored the definition of High Court contained in the existing Act, as it has been pointed out that the proposed new definition would necessitate the issue of a number of notifications as soon as the Bill comes into force, which would be avoided under the old definition.

4. *Clause 5.*—We have extended the time allowed in sub-clause (4) from 9 to 12 months so as more effectually to save the applicant from the consequences of any delay that may occur in the disposal of his application.

5. *Clause 7.*—We have redrafted this clause so as to avoid an ambiguity in the language.

6. *Clause 9.*—We have omitted the words "described or" in sub-clause (1) (b) in order to bring that clause into conformity with sub-clause (1) (d).

7. *Clause 10.*—In sub-clause (2) we have extended the time from 15 to 18 months to correspond with the alteration we have proposed in clause 5, sub-clause (4).

8. *Clause 13.*—We have provided in sub-clause (2) for the grant of a substituted patent in a case where the original patent has been revoked *on any other ground* than fraud, so as to meet cases of hardship arising in circumstances akin to fraud but not legally falling within the definition of fraud. We have also provided that the applicant shall only obtain a substituted patent "for any invention comprised in the revoked patent to which he was entitled".

9. *Clause 15.*—We have inserted in sub-clause (6) after the words "specified in the order" the words "and subject to the payment of such fees as may be prescribed", so as to make it clear that fees may be imposed on extended or re-granted patents.

10. *Clause 16.*—To avoid a defect in the corresponding provision of the English Statute on which this clause is based, we have inserted in sub-clause (3) after the word "unintentional" the words "or unavoidable".

In sub-clause (5) we have provided that the order restoring the patent may be "subject to any conditions deemed to be advisable".

11. *Clause 23.*—In deference to a generally expressed desire we have, in this new clause, adopted the principle of section 27 of the Statute under which a patent is liable to revocation if it is not worked in the country. We have, however, inserted certain restrictions so as to ensure that the patent shall not be revoked unless there is a reasonable prospect of its being worked in India.

12. *Clause 26.*—The inventor, mentioned in sub-clause (1) (c) and again in sub-clause (2) (b) (ii), has been more accurately described by us as the "true and first" inventor.

In sub-clause (1) (g) we have changed the word "and" to "or" as we consider that legal proof of fraud and injury to the public are not both necessary.

13. *Clause 41.*—We have omitted the second sub-clause as we are of opinion that the demands on a patentee in regard to the furnishing of models and samples should be limited.

14. *Clause 63.*—We have amended the wording of sub-clauses (1) and (2) so as to bring out that a person claiming an interest in a patent may move the Controller to have his interest entered in the registers. Mere notices of trusts, however, will be excluded under clause 58, and claims will be inserted under this clause only when the document, etc., affording proof of title is produced.

15. *Clause 66.*—We have inserted a new clause containing instructions to the Controller to issue a periodical publication of patented inventions.

16. *Clause 70.*—In order that an inventor may not unduly be kept in suspense, e.g., in cases of opposition, we have reduced the period allowed for appeal from 3 to 2 months, but we have provided that in calculating this period of 2 months the time occupied in granting a copy of the order appealed against shall be excluded.

17. *Clause 76.*—We have made it clear that barristers or pleaders, etc., may appear, by inserting the words "a legal practitioner or" before the words "an agent".

18. *Clause 77.*—We have omitted this section altogether. India cannot become a party to the International Convention for the Protection of Industrial Property in view of the fact that there is no provision of law for the registration of trade marks. Until a trade marks law is passed, therefore, this section would be inoperative and superfluous.

19. *Schedule.*—We have reduced the maximum fees chargeable for sealing a patent from R50 to R30, and for an application to register a design from R10 to R3. We have also specified the maximum fees to be charged under clause 15 and have made it clear that the fees on the continuance of patents may be paid in advance if desired.

20. The publication ordered by the Council has been made as follows:—

In English.

<i>Gazette.</i>	<i>Date.</i>
Gazette of India	26th March 1910.
Fort Saint George Gazette	5th April 1910.
Bombay Government Gazette	7th April 1910.
Calcutta Gazette	30th March 1910.
United Provinces Gazette	2nd April 1910.
Punjab Government Gazette	8th April 1910.
Burma Gazette	9th April 1910.
Eastern Bengal and Assam Gazette	6th April 1910.
Central Provinces Gazette	2nd April 1910.
Coorg District Gazette	2nd May 1910.
Sind Official Gazette	7th April 1910.

Province.	In the Vernaculars.			Date.
	Language.			
Madras	Hindustani	.	.	17th May 1910.
	Telugu	.	.	31st May 1910.
	Malayalam	.	.	7th June 1910.
	Tamil	.	.	21st June 1910.
	Kanarese	.	.	21st June 1910.
Bombay	Marathi	.	.	21st July 1910.
	Gujarathi	.	.	23rd June 1910.
	Kanarese	.	.	
Bengal	Uriya	.	.	26th July 1910.
	Hindi	.	.	2nd August 1910.
	Bengali	.	.	13th August 1910.
Eastern Bengal and Assam	Bengali	.	.	1st October 1910.
Central Provinces	Hindi	.	.	14th July 1910.
Sindh	Sindhi	.	.	

21. We think that the Bill has not been so altered as to require re-publication, and we recommend that it be passed as now amended.

B. ROBERTSON.

SYED ALI IMAM.

C. W. N. GRAHAM.

SUBBA RAO.

VITHALDAS D. THACKERSEY.

J. M. MACPHERSON.

R. N. MUDHOLKAR.

H. G. GRAVES.

The 23rd January 1911.

[AS AMENDED BY THE SELECT COMMITTEE.]

THE INDIAN PATENTS AND DESIGNS BILL.

CONTENTS.

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2. Definitions.

PART I.

PATENTS.

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5. Proceedings upon application.
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10. Grant and sealing of patent.
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13. Fraudulent applications for patents.

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14. Term of patent.
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THE SCHEDULE.—FEES.

[AS AMENDED BY THE SELECT COMMITTEE.]

[The bracketed marginal references relate to sections of the Inventions and Designs Act, Act V of 1883, and of the Patents and Designs Act, 1907.]

The portions printed in italics denote the alterations proposed by the Select Committee.]

A Bill to amend the law relating to the protection of Inventions and Designs.

WHEREAS it is expedient to amend the law relating to the protection of inventions and designs; It is hereby enacted as follows:—

PRELIMINARY.

1. (1) This Act may be called the Indian Short title, extent and Patents and Designs Act, commencement. 1911.

(2) It extends to the whole of British India (including British Baluchistan and the Santhal Parganas); and

(3) It shall come into force on the *first day of January 1912*.

2. In this Act, unless there is anything repugnant in the subject or Definitions. context,—

[New.] (1) "Advocate General" includes a Government Advocate :

[7 Edw. 7, c. 29, s. 93.] (2) "article" means (as respects designs) any article of manufacture and any substance artificial or natural, or partly artificial and partly natural :

[New.] (3) "Controller" means the Controller of Patents and Designs appointed under this Act :

[7 Edw. 7, c. 29, s. 93.] (4) "copyright" means the exclusive right to apply a design to any article in any class in which the design is registered :

[Ibid., s. 93.] (5) "design" means any design applicable to any article, whether the design is applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more of such purposes, and by whatever means it is applicable, whether by printing, painting, embroidery, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatever, manual, mechanical or chemical, separate or combined, but does not include any trade or property mark as defined in sections 478 and 479 of the Indian Penal Code :

[Act V, 1888, s. 4 (9).] (6) "District Court" has the meaning assigned to that expression by the Code of Civil Procedure, 1908.

[Ibid., s. 4 (10).] (7) "High Court" has the meaning assigned to that expression by the Code of Criminal Procedure, 1898; in reference to proceedings against European British subjects :

[Cf. 7 Edw. 7, c. 29, s. 93.] (8) "invention" means any manner of new manufacture and includes an improvement and an alleged invention :

[Cf. Act V, 1908, s. 2 (11).] (9) "legal representative" means a person who in law represents the estate of a deceased person :

(10) "manufacture" includes any art, process or manner of producing, preparing or making an article, and also any article prepared or produced by manufacture :

(11) "patent" means a patent granted under the provisions of this Act :

(12) "patentee" means the person for the time being entitled to the benefit of a patent :

(13) "prescribed" includes prescribed by rules under this Act: and

(14) "proprietor of a new and original design,"—

(a) where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is so executed; and

(b) where any person acquires the design or the right to apply the design to any article, either exclusively of any other person or otherwise, means, in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the design or right is so acquired; and

(c) in any other case, means the author of the design :

and where the property in, or the right to apply, the design has devolved from the original proprietor upon any other person, includes that other person.

PART I.

PATENTS.

Application for and Grant of Patent.

3. (1) An application for a patent may be made by any person whether he is a British subject or not, and whether alone or jointly with any other person.

(2) The application must be made in the prescribed form, and must be left at the Patent Office in the prescribed manner.

(3) The application must contain a *declaration* to the effect that the applicant is in possession of an invention, whereof he, or in the case of a joint application one at least of the applicants, claims to be the true and first inventor or the legal representative or assign of such inventor and for which he desires to obtain a patent, and must be accompanied by a specification and by the prescribed fee.

(4) Where the true and first inventor is not a party to the application, the application must contain a statement of his name, and such particulars for his identification as may be prescribed, and the applicant must show that he is the legal representative or assign of such inventor.

or in the case of a joint application to the applicants jointly, and the Controller shall cause the patent to be sealed with the seal of the Patent Office.

(2) A patent shall be sealed as soon as may be, and not after the expiration of eighteen months from the date of application :

Provided that,—

- (a) where the Controller has allowed an extension of the time within which an application may be accepted, a further extension of four months after the said eighteen months shall be allowed for the sealing of the patent;
- (b) where the sealing is delayed by an appeal to the Governor General in Council, or by a reference under section 8, or by opposition to the grant of the patent, the patent may be sealed at such time as the Controller may direct;
- (c) where the patent is granted to the legal representative of an applicant who has died before the expiration of the time which would otherwise be allowed for sealing the patent, the patent may be sealed at any time within twelve months after the date of his death;
- (d) where in consequence of the neglect or failure of the applicant to pay any fee a patent cannot be sealed within the period allowed by this section, that period may, on payment of the prescribed fee and on compliance with the prescribed conditions, be extended to such an extent as may be prescribed.

II. Except as otherwise expressly provided

[7 Edw. 7, c. 29, s. 13.] Date of patent.

by this Act, a patent

shall be dated and sealed as of the date of the application :

Provided that no proceedings shall be taken in respect of an infringement committed before the publication of the specification.

12. (1) A patent sealed with the seal of Effect, extent and form the Patent Office shall, of patent. subject to the other provisions of this Act, confer on the patentee the exclusive privilege of making, selling and using the invention throughout British India and of authorizing others so to do.

(2) Every patent may be in the prescribed form and shall be granted for one invention only, but the specification may contain more than one claim; and it shall not be competent for any person in a suit or other proceeding to take any objection to a patent on the ground that it has been granted for more than one invention.

[Cf. 7 Edw. 7, c. 29, s. 15.] 13. (1) A patent granted to the true and Fraudulent applications first inventor or his legal or patents. representative or assign shall not be invalidated by an application in fraud of him, or by protection obtained thereon or by any use or publication of the invention subsequent to that fraudulent application during the period of protection.

(2) Where a patent has been revoked on the ground of fraud or on any other ground, the Controller may, on the application of the true inventor or his legal representative or assign made in accordance with the provisions of this Act, grant to him a patent in lieu of and bearing the same date as the patent so revoked for any invention comprised in the revoked patent to which he was entitled :

Provided that no suit shall be brought for any infringement of the patent so granted committed before the actual date when such patent was granted.

Term of Patent.

14. (1) The term limited in every patent [7 Edw. 7, for the duration thereof c. 29, s. 17.]

Term of patent. shall, save as otherwise expressly provided by this Act, be fourteen years from its date.

(2) A patent shall, notwithstanding anything therein or in this Act, cease if the patentee fails to pay the prescribed fees within the prescribed times :

Provided that the Controller, upon the application of the patentee, shall, on receipt of such additional fee as may be prescribed, enlarge the time to such an extent as may be applied for but not exceeding three months.

(3) If any proceeding is taken in respect of an infringement of the patent committed after a failure to pay any fee within the prescribed time, and before any enlargement thereof, the Court before which the proceeding is taken may, if it thinks fit, refuse to award any damages in respect of such infringement.

15. (1) A patentee may, after advertising [Ibid. s. 18.] Extension of term of in the prescribed manner patent.

his intention to do so, present a petition to the Governor General in Council praying that his patent may be extended for a further term; but such petition must be left at the Patent Office at least six months before the time limited for the expiration of the patent and must be accompanied by the prescribed fee.

(2) Any person may give notice to the Controller of objection to the extension.

(3) Where a petition is presented under sub-section (1), the Governor General in Council [Cf. Act V, 1888, s. 15.] may, as he thinks fit, dispose of the petition himself or refer it to a High Court for decision.

(4) If the petition be referred to a High Court, then on the hearing of such petition under this section the patentee, and any person who has given notice under sub-section (2) of objection, shall be made parties to the proceeding, and the Controller shall be entitled to appear and be heard.

(5) The Court to which the petition is referred shall, in considering its decision, have regard to the nature and merits of the invention in relation to the public, to the profits made by the patentee as such, and to all the circumstances of the case.

(6) If it appears to the Governor General in Council, or to the High Court when the petition [Cf. Edw. 7, c. 29, s. 18.] has been referred to it, that the patentee has been inadequately remunerated by his patent the Governor General in Council or the High Court, as the case may be, may by order extend

the term of the patent for a further term not exceeding seven or, in exceptional cases, fourteen years, or may order the grant of a new patent for such term as may be specified in the order and subject to the payment of such fees as may be prescribed and containing any restriction, conditions and provisions which the Governor General in Council or the High Court, as the case may be, may think fit:

Provided that any patent so extended or granted shall, notwithstanding anything therein, or in this Act, cease if the inventor fails to pay before the expiration of each year the prescribed fee.

[7 Edw. 7, c. 29, s. 20.] 16. (1) Where any patent has ceased owing to

Restoration of lapsed patent. to pay any prescribed fee within the prescribed time, the patentee may apply to the Controller in the prescribed manner for an order for the restoration of the patent.

(2) Every such application shall contain a statement of the circumstances which have led to the omission of the payment of the prescribed fee.

(3) If it appears from such statement that the omission was unintentional or unavoidable and that no undue delay has occurred in the making of the application, the Controller shall advertise the application in the prescribed manner, and within such time as may be prescribed any person may give notice of opposition at the Patent Office.

(4) Where such notice is given the Controller shall notify the applicant thereof.

(5) After the expiration of the prescribed period the Controller shall hear the case and, subject to an appeal to the Governor General in Council, issue an order either restoring the patent subject to any conditions deemed to be advisable or dismissing the application:

Provided that in every order under this section restoring a patent such provisions as may be prescribed shall be inserted for the protection of persons who may have availed themselves of the subject-matter of the patent after the patent had ceased.

Amendment of application or specification.

[Ibid, s. 21.] 17. (1) An applicant or a patentee may at

Amendment of application or specification by writing left at the Patent Controller.

Office and accompanied by the prescribed fee, seek leave to amend his application or specification, including drawings forming part thereof, by way of disclaimer, correction or explanation, stating the nature of, and the reasons for, the proposed amendment.

(2) If the application for a patent has not been accepted, the Controller shall determine whether and subject to what conditions (if any) the amendment shall be allowed.

(3) In any other case the request and the nature of the proposed amendment shall be advertised in the prescribed manner, and at any time within three months from its first advertisement any person may give notice at the Patent Office of opposition to the amendment.

(4) Where such a notice is given the Controller shall give notice of the opposition to the person making the request, and shall hear and decide the case.

(5) Where no notice of opposition is given, or the person so giving notice of opposition does not appear, the Controller shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(6) The decision of the Controller in either case shall be subject to an appeal to the Governor General in Council.

(7) No amendment shall be allowed that would make the application or specification, as amended, claim an invention substantially larger than, or substantially different from, the invention claimed by the application or specification as it stood before amendment.

(8) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed, except in case of fraud; and the amendment shall be advertised in the prescribed manner, and shall in all Courts and for all purposes be deemed to form part of the application or specification.

(9) This section shall not apply when and so long as any suit for infringement or proceeding before a Court for the revocation of the patent is pending.

18. In any suit for infringement of a patent [7 Edw. 7, c. 29, s. 22.] or proceeding before a Court for the revocation of a patent the Court may by order allow the patentee to amend his specification by way of disclaimer in such manner, and subject to such terms as to costs, advertisement or otherwise, as the Court may think fit:

Provided that no amendment shall be so allowed that would make the specification, as amended, claim an invention substantially larger than, or substantially different from, the invention claimed by the specification as it stood before the amendment, and where an application for such an order is made to the Court notice of the application shall be given to the Controller, and the Controller shall have the right to appear and be heard.

19. Where an amendment of a specification [Ibid, s. 23.] by way of disclaimer, correction or explanation has been allowed under this Act, no damages shall be given in any suit in respect of the use of the invention before the disclaimer, correction or explanation unless the patentee establishes to the satisfaction of the Court that his original claim was framed in good faith and with reasonable skill and knowledge.

Register of Patents.

20. (1) There shall be kept at the Patent [Ibid, s. 28.] Office a book called the Register of Patents, wherein shall be entered the names and addresses of grantees of patents, notifications of assignments and of transmissions of patents, of licenses under patents, and of amendments, extensions, and revocations of patents, and such other matters affecting the validity or proprietorship of patents as may be prescribed.

(2) The register of inventions and address book existing at the commencement of this Act shall be incorporated with and form part of the register of patents under this Act.

[New: cf. Act XVI, 1908, s. 49.] (3) The register of patents shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

(4) Copies of deeds, licenses and any other documents affecting the proprietorship in any patent or in any license thereunder, must be supplied to the Controller in the prescribed manner for filing in the Patent Office, and, unless such copies have been so supplied, such deeds, licenses or other documents shall not be received as evidence of any transaction affecting a patent.

Crown.

[Cf. 7 Edw. 7, c. 29, s. 29; & Act V, 1888, s. 17.] 21. Subject to any conditions which the Governor General in Council may have imposed, a patent shall have to all intents the like effect as against His Majesty as it has against a subject:

Provided that the officers or authorities administering any department of the service of His Majesty may, by themselves, their agents, contractors, or others, at any time after the application, use the invention for the services of the Crown on such terms as may, either before or after the use thereof, be agreed on, with the approval of the Governor General in Council, between those officers or authorities and the patentee, or, in default of agreement, as may be settled by the Governor General in Council after hearing all parties interested.

Compulsory Licenses and Revocation.

[Cf. 7 Edw. 7, c. 29, s. 24; & Act V, 1888, s. 43.] 22. (1) Any person interested may present a petition to the Governor General in Council, which shall be left at the Patent Office, together with the prescribed fee, alleging that the reasonable requirements of the public with respect to a patented invention have not been satisfied, and praying for the grant of a compulsory license, or, in the alternative, for the revocation of the patent.

(2) The Governor General in Council shall consider the petition, and if the parties do not come to an arrangement between themselves the Governor General in Council, may, as he thinks fit, either dispose of the petition himself or refer it to a High Court for decision.

[New.] (3) The provisions of sub-section (4) of section 15, prescribing the procedure to be followed in the case of references to the Court under that section, shall apply in the case of references made to the Court under this section.

(4) If the Governor General in Council is of opinion, or, where a reference has been made under sub-section (2) to a High Court, that Court finds that the reasonable requirements of the public with reference to the patented invention have not been satisfied, the patentee may be ordered to grant licenses on such terms as the Governor General in Council or the High Court, as the case may be, may think just, or, if the Governor General in Council or the High Court is of opinion that the reasonable requirements of the public will not be satisfied by the grant of licenses, the patent may be revoked by order of the Governor General in Council or the High Court:

Provided that an order of revocation shall not be made before the expiration of four years from the date of the patent, or if the patentee gives satisfactory reasons for his default.

(5) For the purposes of this section the reasonable requirements of the public shall not be deemed to have been satisfied—

(a) if by reason of the default of the patentee to manufacture to an adequate extent and supply on reasonable terms the patented article, or any parts thereof which are necessary for its efficient

working or to carry on the patented process to an adequate extent or to grant licenses on reasonable terms, any existing trade or industry, or the establishment of any new trade or industry in British India, is unfairly prejudiced, or the demand for the patented article or the article produced by the patented process is not reasonably met; or

(b) if any trade or industry in British India is unfairly prejudiced by the conditions attached by the patentee before or after the commencement of this Act to the purchase, hire, or use of the patented article or to the using or working of the patented process.

(6) An order of the Governor General in Council or of the High Court directing the grant of any license under the section shall, without prejudice to any other method of enforcement, operate as if it were embodied in a deed granting a license and made between the parties to the proceeding.

(7) At any time not less than four years after the date of a patent granted under this Act, any person may apply to the Governor General in

Council for the revocation of the patent on the ground that the patented article or process is manufactured or carried on exclusively or mainly outside British India.

(2) The Governor General in Council shall consider the application, and, if after enquiry he is satisfied—

- (a) that the allegations contained therein are correct; and
- (b) that the applicant is prepared, and is in a position, to manufacture or carry on the patented article or process in British India; and
- (c) that the patentee refuses to grant a license on reasonable terms,

then, subject to the provisions of this section, and unless the patentee proves that the patented article or process is manufactured or carried on to an adequate extent in British India, or gives satisfactory reasons why the article or process is not so manufactured or carried on, the Governor General in Council may make an order revoking the patent either—

- (i) forthwith; or
- (ii) after such reasonable interval as may be specified in the order, unless in the meantime it is shown to his satisfaction that the patented article or process is manufactured or carried on within British India to an adequate extent.

(3) No order revoking a patent shall be made under the last sub-section which is at variance with any treaty, convention, arrangement or engagement with any foreign country or British possession.

(4) The Governor General in Council may on the application of the patentee extend the time limited in any order made under sub-section (2)(ii) for such period not exceeding two years as he may specify in a subsequent order, or revoke any order made under sub-section (2)(ii) or any subsequent order if sufficient cause is in his opinion shown by the patentee.

(24) A patentee may at any time, by giving notice in the prescribed manner to the Controller, revoke surrendered patent. [7 Edw. 7, c. 29, s. 26.] The Controller may, if after giving notice of the offer and

hearing all parties who desire to be heard he thinks fit, accept the offer, and thereupon make an order for the revocation of the patent.

[Act V, 1888, s. 27 (1).] **25.** A patent shall be deemed to be revoked if the Governor General in Council declares, by notification in the Gazette of India, the patent or the mode in which it is exercised to be mischievous to the State or generally prejudicial to the public.

Legal Proceedings.

[Cf. 7 Edw. 7, c. 29, s. 25] **26.** (1) Revocation of a patent in whole or in part may be obtained by petition to a High Court on all or any of the following grounds, namely:—

- (a) that any invention included in the statement of claim is of no utility;
- (b) that any invention included in the statement of claim was not, at the date of the application for a patent, a new invention within the meaning of this Act;
- (c) that the applicant was not the *true and first* inventor thereof or the assign or legal representative of *such* inventor thereof;
- (d) that the original or any amended application or specification does not fulfil the requirements of this Act;
- (e) that the applicant has knowingly or fraudulently included in the application for a patent or in the original or any amended specification, as his invention, something which was not new or whereof he was neither the inventor nor the assign nor the legal representative of *such* inventor;
- (f) that the original or any subsequent application relating to the invention, or the original or any amended specification, contains a wilful or fraudulent mis-statement;
- (g) that a part of the invention or the manner in which a part is to be made and used as described in the original or any amended specification, is not hereby sufficiently described, and that this insufficiency was fraudulent *or* is injurious to the public.

[Cf. 7. Edw. 7, c. 29, s. 25 (3).] (2) A petition for revocation of a patent may be presented—

- (a) by the Advocate General or any person authorized by him; or
- (b) by any person alleging—
 - (i) that the patent was obtained in fraud of his rights, or of the rights of any person under or through whom he claims; or
 - (ii) that he, or any person under or through whom he claims, was the *true and first* inventor of any invention included in the claim of the patentee; or
 - (iii) that he, or any person under or through whom he claims an interest in any trade, business, or manufacture, had publicly manufactured, used, or sold, within British India, before the date of the patent, anything claimed by the patentee as his invention.

[Cf. Act V, 1888, s. 32.] (3) The High Court may, irrespective of any provisions of the Code of Civil Procedure, 1908, in this behalf, require any person, other than the Advocate General or any person authorized by him, applying for the revocation of a patent to give security for the payment of all costs incurred or likely to be incurred by any person appearing to oppose the petition.

27. (1) Notice of any petition for revocation of [Act V, 1888, s. 34.] a patent under section 25 shall be served on all persons appearing from the register to be proprietors of that patent or to have shares or interests therein, and it shall not be necessary to serve the notice on any other person.

(2) The notice shall be deemed to be sufficiently served if a copy thereof is sent by post in a registered letter directed to the person and place for the time being stated in the register.

28. (1) A High Court may, if it thinks fit, [Act V, 1888, s. 35.] direct an issue for the trial before other Courts. trial, before itself or any other High Court, or any District Court, of any question arising upon a petition to itself under section 26, and the issue shall be tried accordingly.

(2) If the issue is directed to another High Court, the finding shall be certified by that Court to the High Court directing the issue.

(3) If the issue is directed to a District Court, the finding of that Court shall not be subject to appeal, but the evidence taken upon the trial shall be recorded and a copy thereof, certified by the Judge of the Court, shall be transmitted, together with any remarks which he may think fit to make thereon, to the High Court directing the issue, and the High Court may thereupon act upon the finding of the District Court, or dispose of the petition upon the evidence recorded, or direct a new trial, as the justice of the case may require.

29. (1) A patentee may institute a suit in a [Act V, 1888, s. 29.] District Court having jurisdiction to try the suit against any person who, during the continuance of a patent acquired by him under this Act in respect of an invention, makes, sells, or uses the invention without his license, or counterfeits it, or imitates it.

(2) Every ground on which a patent may be revoked under this Act shall be available by way of defence to a suit for infringement.

30. A patentee shall not be entitled to re-exempt of innocent infringer from liability for respect of any infringement of a patent granted after the commencement of this Act from any defendant who proves that at the date of the infringement he was not aware, nor had reasonable means of making himself aware, of the existence of the patent, and the marking of an article with the word "patent," "patented," or any word or words expressing or implying that a patent has been obtained for the article, stamped, engraved, impressed on, or otherwise applied to the article, shall not be deemed to constitute notice of the existence of the patent unless the word or words are accompanied by the year and number of the patent:

Provided that nothing in this section shall affect any proceedings for an injunction.

31. In a suit for infringement of a patent, [7 Edw. 7, c. 29, s. 34.] Order for inspection, etc., the Court may, on the in suit. application of either party, make such order for an injunction, inspection or account, and impose such terms and give such directions respecting the same and the proceedings thereon, as the Court may see fit.

32. In a suit for infringement of a patent the Court may certify that the validity of the patent in question, and if the Court so certifies, then in any subsequent suit in that Court for infringement of the same patent the plaintiff on obtaining a final order or judgment in his favour shall, unless the Court trying the suit otherwise directs, have his full costs, charges and expenses of and incidental to the said suit properly incurred.

[Act V, 1888, s. 39.] **33.** A Court making a decree in a suit under Transmission of decrees section 29 or an order and orders to the Controller, on a petition under section 26 shall send a copy of the decree or order, as the case may be, to the Controller, who shall cause an entry thereof and reference thereto to be made in the register of patents.

[*Ibid.*, s. 42.] **34.** A High Court to which a petition has been presented under Power of High Court to stay proceedings, etc. section 26 may stay proceedings on, or dismiss, the petition if in its opinion the petition would be disposed of more justly or conveniently by another High Court.

[7 Edw. 7, c. 29, s. 31.] **35.** (1) In a suit or proceeding for infringement, Hearing with assessor. ment or revocation of a patent, the Court may, if it thinks fit, and shall on the request of either of the parties to the proceedings, call in the aid of an assessor specially qualified, and try the case wholly or partially with his assistance.

(2) A Court exercising appellate jurisdiction in respect of such suit or proceeding may, if it thinks fit, call in the aid of an assessor as aforesaid.

(3) The remuneration, if any, to be paid to an assessor under this section shall in every case be determined by the Court and be paid by it as part of the expenses of the execution of this Act.

[*Ibid.*, s. 36.] **36.** Where any person claiming to be the Remedy in case of patentee of an invention, groundless threats of legal by circulars, advertisements, or otherwise, threatens any other person with any legal proceedings or liability in respect of any alleged infringement of the patent, any person aggrieved thereby may bring a suit against him in a District Court having jurisdiction to try the suit, and may obtain an injunction against the continuance of such threats, and may recover such damage (if any) as he has sustained thereby, if the alleged infringement to which the threats related was not in fact an infringement of any legal rights of the person making such threats:

Provided that this section shall not apply if the person making such threats with due diligence commences and prosecutes a suit for infringement of his patent.

Miscellaneous.

[*Ibid.*, s. 37.] **37.** Where, after the commencement of this Grant of patents to two or more persons. Act, a patent is granted to two or more persons jointly, they shall, unless otherwise specified in the patent, be treated for the purpose of the devolution of the legal interest therein as joint tenants, but, subject to any contract to the contrary, each of such persons shall be entitled to use the invention for his own profit without accounting to the others, but shall not be entitled to grant a license without their consent, and, if any such person dies, his beneficial interest in the patent shall devolve on his legal representatives.

[Act V, 1888, s. 21.] **38.** (1) An invention shall be deemed a new Novelty of invention. invention within the meaning of this Act—

(a) if it has not, before the date of the application for a patent thereon, been

publicly used in any part of British India, or been made publicly known in any part of British India, and

(b) if the inventor has not by secret or experimental user made direct or indirect profits from his invention in excess of such an amount as the Court or the Governor General in Council, as the case may be, may, in consideration of all the circumstances of the case, deem reasonable.

(2) The public use or knowledge of an invention before the date of the application for a patent thereon shall not be deemed a public use or knowledge within the meaning of this Act if the knowledge has been obtained surreptitiously or in fraud of the *true and first* inventor or has been communicated to the public in fraud of *such* inventor or in breach of confidence :

Provided that *such* inventor has not acquiesced in the public use of his invention, and that, within six months after the commencement of that use, he applies for a patent.

39. If a patent is lost or destroyed, or its non-loss or destruction of production is accounted for to the satisfaction of the Controller, the Controller may at any time, on payment of the prescribed fee, seal a duplicate thereof.

40. (1) The exhibition of an invention at an [*Ibid.*, s. 45.] Provisions as to exhibi- industrial or interna- tional exhibition, certi- fied as such by the Governor General in Council, or the publication of any description of the invention during the period of the holding of the exhibition, or the use of the invention for the purpose of the exhibition in the place where the exhibition is held, or the use of the invention during the period of the holding of the exhibition by any person elsewhere, without the privity or consent of the inventor, shall not prejudice the right of the inventor to apply for and obtain a patent in respect of the invention or the validity of any patent granted on the application :

Provided that—

(a) the exhibitor, before exhibiting the invention, gives the Controller the prescribed notice of his intention to do so; and

(b) the application for a patent is made before or within six months from the date of the opening of the exhibition.

(2) The Governor General in Council may, by notification in the Gazette of India, apply this section to any exhibition mentioned in the notification in like manner as if it were an industrial or international exhibition certified as such by the Governor General in Council, and any such notification may provide that the exhibitor shall be relieved from the condition of giving notice to the Controller of his intention to exhibit, and shall be so relieved either absolutely or upon such terms and conditions as may be stated in the notification.

specimens of the design; and if he fails to do so, the Controller may erase his name from the register, and thereupon the copyright in the design shall cease; and

(b) cause each such article to be marked with the prescribed mark, or with the prescribed words or figures, denoting that the design is registered; and, if he fails to do so, the proprietor shall not be entitled to recover any penalty or damages in respect of any infringement of his copyright in the design unless he shows that he took all proper steps to ensure the marking of the article, or unless he shows that the infringement took place after the person guilty thereof knew or had received notice of the existence of the copyright in the design.

(2) Where a representation is made to the Governor General in Council by or on behalf of any trade or industry that in the interests of the trade or industry it is expedient to dispense with or modify as regards any class or description of articles any of the requirements of this section as to marking, the Governor General in Council may, if he thinks fit, by rule under this Act, dispense with or modify such requirements as regards any such class or description of articles to such extent and subject to such conditions as he thinks fit.

49. The disclosure of a design by the proprietor to any other person,

Effect of disclosure on copyright. in such circumstances as would make it contrary to

good faith for that other person to use or publish the design, and the disclosure of a design in breach of good faith by any person other than the proprietor of the design, and the acceptance of a first and confidential order for goods bearing a new or original textile design intended for registration, shall not be deemed to be a publication of the design sufficient to invalidate the copyright thereof if registration thereof is obtained subsequently to the disclosure or acceptance.

[7 Edw., c. 29, s. 55.] 50. (1) During the existence of copyright in

Inspection of registered designs. a design, or such shorter period not being less than two years from the registration of the design as may be prescribed, the design shall not be open to inspection except by the proprietor or a person authorized in writing by him, or a person authorized by the Controller or by the Court, and furnishing such information as may enable the Controller to identify the design, and shall not be open to the inspection of any person except in the presence of the Controller, or of an officer acting under him, and on payment of the prescribed fee; and the person making the inspection shall not be entitled to take any copy of the design, or of any part thereof:

Provided that, where registration of a design is refused on the ground of identity with a design already registered, the applicant for registration shall be entitled to inspect the design so registered.

(2) After the expiration of the copyright in a design, or such shorter period as aforesaid, the design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee.

(3) Different periods may be prescribed under this section for different classes of goods.

51. On the request of any person furnishing [7 Edw., c. 29, s. 55.] such information as may enable the Controller to identify the design, and on payment of the prescribed fee, the Controller shall inform such person whether the registration still exists in respect of the design, and if so, in respect of what classes of goods, and shall state the date of registration, and the name and address of the registered proprietor.

Industrial and international exhibitions.

52. (1) The exhibition at an industrial or [Ibid., s. 59.] international exhibition certified as such by the Governor General in

Council, or the exhibition elsewhere during the period of the holding of the exhibition, without the privity or consent of the proprietor, of a design, or of any article to which a design is applied, or the publication, during the holding of any such exhibition, of a description of a design, shall not prevent the design from being registered, or invalidate the registration thereof:

Provided that—

(a) the exhibitor, before exhibiting the design or article, or publishing a description of the design, gives the Controller the prescribed notice of his intention to do so; and

(b) the application for registration is made before or within six months from the date of the opening of the exhibition.

(2) The Governor General in Council may, by notification in the Gazette of India, apply this section to any exhibition mentioned in the notification in like manner as if it were an industrial or international exhibition certified as such by the Governor General in Council, and any such notification may provide that the exhibitor shall be relieved from the condition of giving notice to the Controller of his intention to exhibit, and shall be so relieved either absolutely or upon such terms and conditions as may be stated in the notification.

Legal Proceedings.

53. (1) During the existence of copyright [Ibid., s. 60.] in any design it shall not be lawful for any person—

(a) for the purpose of sale to apply or cause to be applied to any article in any class of goods in which the design is registered the design or any fraudulent or obvious imitation thereof, except with the license or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied; or,

(b) knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article without the consent of the registered proprietor, to publish or expose or cause to be published or exposed for sale that article.

(2) If any person acts in contravention of this section he shall be liable for every contravention—

(a) to pay to the registered proprietor of the design a sum not exceeding five hundred rupees recoverable as a contract debt, or

(b) if the proprietor elects to bring a suit for the recovery of damages for any such contravention, and for an injunction against the repetition thereof, to pay such damages as may be awarded and to be restrained by injunction accordingly :

Provided that the total sum recoverable in respect of any one design under clause (a) shall not exceed one thousand rupees.

[Act V, 1888, s. 57 (2).] (3) When the Court makes a decree in a suit under sub-section (2), it shall send a copy of the decree to the Controller, who shall cause an entry thereof to be made in the register of designs.

[7 Edw. 7, c. 29, s. 61.] 54. The provisions of this Act with regard to Application of certain provisions of the Act as to patents to designs. certificates of the validity of a patent, and to the remedy in case of groundless threats of legal proceedings by a patentee shall apply in the case of registered designs in like manner as they apply in the case of patents, with the substitution of references to the copyright in a design for references to a patent, and of references to the proprietor of a design for references to the patentee, and of references to the design for references to the invention.

PART III.

GENERAL.

Patent Office and Proceedings thereat.

[7 Edw. 7, c. 29, s. 62.] 55. (1) The Governor General in Council may Patent Office. provide, for the purposes of this Act, an office which shall be called, and is in this Act referred to as, the Patent Office.

(2) The Patent Office shall be under the immediate control of the Controller of Patents and Designs, who shall act under the superintendence and direction of the Governor General in Council.

(3) There shall be a seal for the Patent Office.

(4) Any act or thing directed to be done by or to the Controller may be done by or to any officer authorized by the Governor General in Council.

56. The Governor General in Council may [7 Edw. 7, c. 29, s. 63.] appoint the Controller, Officers and clerks, and so many officers and clerks, with such designations and duties as he thinks fit.

Fees.

57. (1) There shall be paid in respect of the grant of patents and the registration of designs, and applications therefor, and in respect of other matters with relation to patents and designs under this Act, such fees as may be prescribed by the Governor General in Council, so however that the fees prescribed in respect of the instruments and matters mentioned in the schedule shall not exceed those there specified.

(2) A proceeding in respect of which a fee is payable under this Act or the rules made thereunder shall be of no effect unless the fee has been paid.

Provisions as to registers and other documents in the Patent Office.

58. There shall not be entered in any register [7 Edw. 7, c. 29, s. 66.] kept under this Act, or be receivable by the Controller, any notice of any trust, expressed, implied or constructive.

59. Every register kept under this Act shall [Ibid., s. 67.] at all convenient times be open to the inspection of the public, subject to the provisions of this Act; and certified copies, sealed with the seal of the Patent Office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

60. Reports of or to the Controller made under [Ibid., s. 68.] this Act shall not in any case be published or be open to public inspection.

61. (1) Where an application for a patent has been abandoned, or become void, the specifications and drawings (if any) accompanying or left in connection with such application, shall not, save as otherwise expressly provided by this Act, at any time be open to public inspection or be published by the Controller.

(2) Where an application for a design has been abandoned or refused the application and any drawings, photographs, tracings, representations, or specimens left in connection with the application shall not at any time be open to public inspection or be published by the Controller.

62. The Controller may, on request in writing accompanied by the to correct clerical errors. prescribed fee,—

(a) correct any clerical error in or in connection with an application for a patent or in any patent or any specification;

(b) cancel the registration of a design either wholly or in respect of any particular goods in connection with which the design is registered.

(c) correct any clerical error in the representation of a design or in the name or address of the proprietor of any patent or design, or in any other matter which is entered upon the register of patents or the register of designs.

[7 Edw. 7, c. 29, s. 71.] **63. (1)** Where a person *claims to be* entitled by assignment, transmission, or other operation of law to a patent, or to the copyright in a registered design, the Controller shall, on request and on proof of title to his satisfaction, register *his interest in* such patent or design.

(2) Where any person *claims to be* entitled as mortgagee, licensee, or otherwise to any interest in a patent or registered design, the Controller shall, on request and on proof of title to his satisfaction, cause notice of the interest to be entered in the prescribed manner in the register of patents or designs, as the case may be.

(3) The person registered as the proprietor of a patent or design shall, subject to the provisions of this Act and to any rights appearing from the register to be vested in any other person, have power absolutely to assign, grant licenses as to, or otherwise deal with, the patent or design and to give effectual receipts for any consideration for any such assignment, license, or dealing :

Provided that any equities in respect of the patent or design may be enforced in like manner as in respect of any other moveable property.

[Ibid., 72; cf. Act V, 1888, ss. 41 and 59.] **64. (1)** A High Court may, on the application of any person aggrieved by the non-insertion in or omission from the register of patents or designs of any entry, or by any entry made in either such register without sufficient cause, or by any entry wrongly remaining on either such register, or by an error or defect in any entry in either such register, make such order for making, expunging, or varying such entry as it may think fit.

(2) The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of a register.

(3) The prescribed notice of any application under this section shall be given to the Controller, who shall have the right to appear and be heard thereon.

(4) Any order of the Court rectifying a register shall direct that notice of the rectification be served on the Controller in the prescribed manner, who shall upon the receipt of such notice rectify the register accordingly.

[Act V, 1888, ss. 42 and 60.] **(5)** A High Court to which an application has been made under this section may stay proceedings on or dismiss the application if in its opinion the application would be disposed of more justly or conveniently by another High Court.

Powers and duties of Controller.

[7 Edw. 7, c. 29, s. 77.] **65. Subject to any rules in this behalf, the Controller in any proceedings before him under this Act shall have**

Powers of Controller in proceedings under Act.

the powers of a Civil Court for the purpose of receiving evidence and administering oaths and enforcing the attendance of witnesses and compelling the production of documents and awarding costs.

66. The Controller shall issue periodically Publication of patented a publication of patent-inventions. ed inventions containing such information as the Governor General in Council may direct.

67. Where any discretionary power is by or under this Act given to the Controller, he shall not exercise that power adversely to the applicant for a patent, or for amendment of an application or of a specification, or for registration of a design, without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard.

68. The Controller may, in any case of doubt [Ibid., s. 74.] Power of Controller to or difficulty arising in take directions of Governor the administration of General in Council. any of the provisions of this Act apply to the Governor General in Council for directions in the matter.

69. The Controller may refuse to grant a [Ibid., s. 75.] Refusal to grant patent, patent for an invention, etc., in certain cases. or to register a design, of which the use would, in his opinion, be contrary to law or morality.

70. (1) Where an appeal is declared by this [New.] Appeals to the Governor Act to lie from the Controller to the Governor General in Council. General in Council, the appeal shall be made within two months of the date of the order passed by the Controller, and shall be in writing, and accompanied by the prescribed fee.

(2) In calculating the said period of two months the time (if any) occupied in granting a copy of the order appealed against shall be excluded.

(3) The Governor General in Council may, if he thinks fit, obtain the assistance of an expert in deciding such appeals, and the decision of the Governor General in Council shall be final.

Evidence, etc.

71. A certificate purporting to be under the [7 Edw. 7, hand of the Controller c. 20, s. 78.] Certificate of Controller as to any entry, matter, to be evidence. or thing which he is authorized by this Act, or any rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

72. Copies of all specifications, drawings, and [Ibid.; cf. s. 1888, s. 11 (2).] Transmission of certified amendments left at the Patent Office after the commencement of this printed copies of specifications, etc. Act, printed for and sealed with the seal of the Patent Office, shall be transmitted as soon as

may be, after they have been accepted or allowed at the Patent Office, to the Governor of Fort St. George in Council, the Governor of Bombay in Council, the Lieutenant-Governor of Burma and to such other authorities as the Governor General in Council may appoint in this behalf, and shall be open to the inspection of any person at all reasonable times at places to be appointed by those authorities.

[7 Edw. 7, c. 29, s. 83.]

73. Any application, notice, or other document authorized or required to be left, made, or given at the Patent Office or to the Controller, or to any other person under this Act, may be sent by post.

[*Ibid.*, s. 81.]

74. (1) If any person is, by reason of infancy, lunacy, or other disability, incapable of making any statement or doing anything required or permitted by or under this Act, the lawful guardian, committee or manager (if any) of the person subject to the disability, or, if there be none, any person appointed by any Court possessing jurisdiction in respect of his property, may make such statement or a statement as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of the person subject to the disability.

(2) An appointment may be made by the Court for the purposes of this section upon the petition of any person acting on behalf of the person subject to the disability or of any other person interested in the making of the statement or the doing of the thing.

Agency.

[Cf. Act V, 1888, ss. 45 & 46.]

Subscription and verification of certain documents.

75. The following documents, namely,—

- (1) applications for a patent,
- (2) notices of opposition,
- (3) applications for extension of term of a patent,
- (4) applications for the restoration of lapsed patents,
- (5) applications for leave to amend,
- (6) applications for compulsory license or revocation, and
- (7) notices of surrenders of patent,

shall be signed and verified, in the manner prescribed, by the person making such applications or giving such notices :

Provided that, if such person is absent from British India, they may be signed and verified on his behalf by an agent resident in British India authorized by him in writing in that behalf.

[Cf. Act V, 1888, s. 47.]

76. (1) All other applications and communications to the Controller under this Act may be signed by, and all attendances upon the Controller may be made by or through, a legal practitioner or by or through an agent authorized to the satisfaction of the Controller.

[New.]

(2) The Controller may, if he sees fit, require—

- (a) any such agent to be resident in British India;

(b) any person not residing in British India to employ an agent residing in British India;

(c) the personal signature or presence of [Cf. 7 Edw. 7, c. 29, rule No. 9.] any applicant, opponent or other person.

Powers, etc., of Governor General in Council.

77. (1) The Governor General in Council [7 Edw. 7, c. 29, s. 86.] Power for Governor may make such rules General in Council to make as he thinks expedient, subject to the provisions of this Act—

- (a) for regulating the practice or registration under this Act;
- (b) for classifying goods for the purposes of designs;
- (c) for making or requiring duplicates of specifications, drawings, and other documents;
- (d) for securing and regulating the publishing and selling of copies, at such prices and in such manner as the Governor General in Council thinks fit, of specifications, drawings, and other documents;
- (e) for securing and regulating the making, printing, publishing, and selling of indexes to, and abridgments of, specifications and other documents in the Patent Office; and providing for the inspection of indexes and abridgments and other documents;
- (f) generally for regulating the business of the Patent Office, the conduct of proceedings before the Controller and all things by this Act placed under the direction or control of the Controller, or of the Governor General in Council; and
- (g) generally for the purpose of carrying into effect the provisions of this Act.

(2) The power to make rules under this section shall be subject to the condition of the rules being made after previous publication.

(3) All rules made under this section shall be published in the Gazette of India and on such publication shall have effect as if enacted in this Act.

Offences.

78. If any person uses on his place of business, or on any document issued by him, or otherwise, the words "Patent Office," or any other words suggesting that his place of business is officially connected with, or is, the Patent Office, he shall be punishable with fine which may extend to two hundred rupees, and, in the case of a continuing offence, with further fine of twenty rupees for each day on which the offence is continued after conviction therefor.

Savings and Repeal.[7 Edw. 7,
c. 29, s. 97.]

79. Nothing in this Act shall take away, abridge, or prejudicially affect the prerogative of, the Crown in relation to the granting of any letters patent or to the withholding of a grant thereof.

V of 1888.

80. The Inventions and Designs Act, 1888, is hereby repealed.

Repeal.

Provided that this repeal shall not affect any application under the said Act pending at the commencement of this Act, and all proceedings on such application shall be continued as if this Act had not been passed.

81. (1) At any time within two years from the commencement of this Act, any person possessing an exclusive privilege under the

Substitution of patents for rights under repealed Act.

Inventions and Designs Act, 1888, may, by request in writing left at the Patent Office and on payment of the prescribed fee, seek leave to convert his exclusive privilege under the said Act into a patent under this Act.

(2) Notice of any application under this section shall be sent to all persons appearing from the address book kept under the said Act to have any shares or interests in the exclusive privilege.

(3) Save as aforesaid, the procedure prescribed by section 17 in the case of applications under that section shall, so far as may be, apply to every application under this section.

(4) Every patent granted under this section shall be dated as of the date of the exclusive privilege for which it is substituted.

THE SCHEDULE.

(See section 57.)

FEES.

	Rs.
On application for a patent	10
Before sealing a patent	30
Before the expiration of the 4th year from the date of the patent.	50
Before the expiration of the 5th year from the date of the patent.	50
Before the expiration of the 6th year from the date of the patent.	50
Before the expiration of the 7th year from the date of the patent.	50
Before the expiration of the 8th year from the date of the patent.	50
Before the expiration of the 9th year from the date of the patent.	100
Before the expiration of the 10th year from the date of the patent.	100
Before the expiration of the 11th year from the date of the patent.	100
Before the expiration of the 12th year from the date of the patent.	100
Before the expiration of the 13th year from the date of the patent.	100
Provided that the fees for two or more years be paid in advance.	
On application to extend term of patent	50
Before the expiration of each year of the extended term of patent or of new patent granted under section 15.	100
On application for registration of a design	3

J. M. MACPHERSON,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill to amend the Law relating to the registration, surveillance and control of Criminal Tribes was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 24th January 1911 :—

We, the undersigned, Members of the Select Committee to which the Bill to amend the

From Chief Commissioner, Coorg, No. 1755, dated 26th August 1910; from Chief Commissioner and Agent to Governor General, North-West Frontier Province, No. 1405-N., dated 29th August 1910; from Chief Commissioner, Ajmer-Merwara, No. 1367, dated 19th September 1910; from Government, United Provinces, No. 763, dated 23rd September 1910 [Papers No. 1].

From Government, Burma, No. 96-M. L-25, dated 27th September 1910 [Paper No. 2].

From Agent to Governor General and Chief Commissioner in Baluchistan, No. 4754, dated 11th October 1910, and enclosure [Papers No. 3].

From Government, Punjab, No. 264 (Home—Police), dated 8th October 1910, and enclosures [Papers No. 4].

From Government, Eastern Bengal and Assam, No. 128-L. J., dated 19th October 1910; from Government, Punjab, No. 272-Home, dated 22nd October 1910, and enclosure [Papers No. 5].

From Chief Commissioner, Central Provinces, No. 2201—V-4-9, dated 29th October 1910 [Paper No. 6].

From Government, Bombay, No. 6375, dated 8th November 1910, and enclosures [Papers No. 7].

From Government, Madras, No. 1685, dated 19th November 1910, and enclosures [Papers No. 8].

From High Court, Calcutta, No. 682, dated 22nd December 1910 Paper No. 9].

2. We have amended clause 4 in order to permit the preparation of the register by a person other than the District Magistrate. We have thus reconciled the language of clauses 4 and 5 and have also made amendments in clause 7 (2) (a) and (b) in order to provide for a similar delegation in the case of alterations in the register.

3. We have amended clause 5 by the addition of a proviso allowing the District Magistrate to exempt individual members of a criminal tribe from registration.

4. To avoid the odium, which it has been represented to us, attaches to the use of the word "reformatory", we have prefixed to that word the words "industrial, agricultural or" in clause 16 and in other places throughout the Bill.

5. We have raised from four to six the age of children in respect of whom the powers conferred by clause 17 can be exercised, and have added a provision making the decision of the District Magistrate final on any question of age for the purposes of this clause.

6. We have restored the provision in section 19A of the Criminal Tribes Act, 1871, to clause 23 in order to make it quite clear that the clause will not limit punishment to the punishments specified therein.

7. To the offences specified in the schedule referred to in clause 23 we have added the offence punishable under section 369 of the Indian Penal Code (kidnapping a child under ten years with intent to steal from its person), as it has been represented to us that this is an offence to which certain criminal tribes are addicted.

8. We have made certain small drafting changes with the object of securing uniformity of language to which we need not allude further.

9. The publication ordered by the Council has been made as follows :—

*In English.**Gazette.**Date.*

Gazette of India	•	•	•	•	•	•	23rd July 1910.
Fort Saint George Gazette	•	•	•	•	•	•	2nd August 1910.
Bombay Government Gazette	•	•	•	•	•	•	4th August 1910.
Calcutta Gazette	•	•	•	•	•	•	3rd August 1910.
United Provinces Gazette	•	•	•	•	•	•	30th July 1910.
Punjab Government Gazette	•	•	•	•	•	•	5th August 1910.
Burma Gazette	•	•	•	•	•	•	13th August 1910.
Eastern Bengal and Assam Gazette	•	•	•	•	•	•	10th August 1910.
Central Provinces Gazette	•	•	•	•	•	•	30th July 1910.
Coorg District Gazette	•	•	•	•	•	•	1st October 1910.
Sind Official Gazette	•	•	•	•	•	•	4th August 1910.

In the Vernaculars.

<i>Province.</i>	<i>Language.</i>	<i>Date.</i>
Madras	Tamil	30th August 1910.
	Telugu	
	Hindustani	
	Kanarese	
	Malayalam	
Bombay	Uriya	11th October 1910.
	Marathi	
	Gujarathi	
United Provinces Gazette Eastern Bengal and Assam Coorg Sindh	Kanarese	22nd September 1910.
	Urdu	
	Bengali	
	Kanarese	
	Sindhi	24th September 1910.
		1st October 1910.
		22nd September 1910.

10. We think that the Bill has not been so altered as to require re-publication, and we recommend that it be passed as now amended.

J. L. JENKINS.
SYED ALI IMAM.
G. M. CHITNAVIS.
G. K. GOKHALE.
J. M. HOLMS.
F. A. TH. PHILLIPS.
UMAR HYAT.
A. EARLE.
H. S. P. DAVIES.

The 23rd January 1911.

[AS AMENDED BY THE SELECT COMMITTEE.]

THE CRIMINAL TRIBES BILL.**CONTENTS.***Preliminary.***CLAUSES.**

1. Short title and extent.
2. Definitions.

Notification of Criminal Tribes.

3. Power to declare any tribe, gang or class a criminal tribe.

Registration of Members of Criminal Tribes.

4. Registration of members of criminal tribes.
5. Procedure in making register.
6. Charge of register.
7. Alterations in register.
8. Complaints of entries in register.
9. Power to take finger-impressions at any time.
10. Members of criminal tribes to report themselves or notify residence.

Restriction of Movements of Criminal Tribes.

11. Procedure when deemed expedient to restrict movements of, or settle, criminal tribes.
12. Notification restricting movements of, or settling, tribe.
13. Power to vary specified area or place of residence.
14. Verification of presence of members of tribe within prescribed area or place of residence.

15. Transfer of register in certain cases.

Settlements and Schools.

16. Power to place tribe in settlement.
17. Power to place children in schools and to apprentice them.
18. Power of Local Government to discharge or remove persons from settlement or school.
19. Power of Governor General in Council to direct use of any settlement or school in India for reception of persons.

Rules.

20. Power to make rules.

*Penalties and Procedure.***CLAUSES.**

21. Penalties for failure to comply with terms of notice under section 5 or 7.
22. Penalties for breach of rules.
23. Enhanced punishment for certain offences by members of criminal tribe after previous conviction.
24. Punishment for registered members of criminal tribe found under suspicious circumstances.
25. Arrest of registered person found beyond prescribed limits.
26. Duties of village-headmen, village-watchmen, and owners or occupiers of land to give information in certain cases.
27. Penalty for breach of such duties.

Supplemental.

28. Bar of jurisdiction of Courts in question relating to notifications under sections 3, 12 and 13.
29. Repeals.

THE SCHEDULE.

*The Criminal Tribes Bill.**(Registration of Members of Criminal Tribes.)*

[AS AMENDED BY THE SELECT COMMITTEE.]

[The portions printed in italics denote the alterations proposed by the Select Committee.]

A Bill to amend the law relating to the registration, surveillance and control of Criminal Tribes.

WHEREAS it is expedient to amend the law relating to the registration, surveillance and control of criminal tribes; It is hereby enacted as follows:

Preliminary.

1. (1) This Act may be called the Criminal Tribes Act, 19^o; and Short title and extent.

(2) It extends to the whole of British India.

2. In this Act, unless there is anything repugnant in the subject or context, Definitions.

(1) "criminal tribe" means a tribe, gang or class of persons declared to be a criminal tribe by a notification under section 3;

(2) "prescribed" means prescribed by rules under this Act; and

(3) "tribe," "gang" or "class" includes any part or members of a tribe, gang or class.

Notification of Criminal Tribes.

[Cf. Act, s. 2.]

3. If the Local Government has reason to believe that any tribe, gang or class of persons is a criminal tribe, addicted to the systematic commission of non-bailable offences, it may, by notification in the local official Gazette, declare that such tribe, gang or class is a criminal tribe for the purposes of this Act.

Registration of Members of Criminal Tribes.

[Cf. Act, s. 7.]

4. The Local Government may direct the District Magistrate to make or members of criminal tribes to cause to be made a register of the members of any criminal tribe or of any part thereof within his district.

[Cf. Act, s. 8.]

5. (1) Upon receiving such direction, the District Magistrate shall publish a notice in the prescribed manner at the place where the register is to be made and at such other places as he may think fit, calling upon all the members of such criminal tribe, or of such part thereof as is directed to be registered,—

(a) to appear at a time and place therein specified before a person appointed by him in this behalf;

(b) to give to that person such information as may be necessary to enable him to make the register; and

(c) to allow their finger-impressions to be recorded:

Provided that the District Magistrate may exempt any individual member of such criminal tribe or part thereof from registration.

6. The register, when made, shall be placed [Cf. Act, s. 10.] in the keeping of the Charge of register. Superintendent of Police, who shall, from time to time, report to the District Magistrate any alterations which ought in his opinion to be made therein, either by way of addition or erasure.

7. (1) After the register has been placed [Cf. Act, s. 11.] in the keeping of the Superintendent of Police gister. no person shall be added to the register, and no registration shall be cancelled except by or by the order in writing of the District Magistrate.

(2) Before the name of any person is added to the register under this section, the Magistrate shall give notice in the prescribed manner to the person concerned—

(a) to appear before him or a person appointed by him in this behalf at a time and place therein specified;

(b) to give him or such person such information as may be necessary to enable him to make the entry; and

(c) to allow his finger-impressions to be recorded.

8. Any person deeming himself aggrieved by [Cf. Act, s. 12.] any entry made, or proposed to be made, in such register. Complaints of entries. register either when the register is first made or subsequently, may complain to the District Magistrate against such entry, and the Magistrate shall retain such person's name on the register, or enter it therein, or erase it therefrom, as he may see fit.

9. The District Magistrate or any officer empowered by him in this impressions at any behalf may at any time time. order the finger-impressions of a registered member of a criminal tribe to be taken.

10. The Local Government may, by notification in the local official Gazette, direct in respect of any criminal tribe that every registered member thereof shall, in the prescribed manner,

(a) report himself at fixed intervals; or
(b) notify his place of residence and any change or intended change of residence and any absence or intended absence from his residence.

[New.]

[New.]

*The Criminal Tribes Bill.**(Restriction of Movements of Criminal Tribes. Settlements and Schools.)**Restriction of Movements of Criminal Tribes.*

[Cf. Act, ss. 3 and 4.] 11. (1) If the Local Government considers that it is expedient that Procedure when any criminal tribe should be deemed expedient to restrict movements of, be—

or settle, criminal tribes.

(a) restricted in its movements to any specified area, or

(b) settled in any place of residence,

it may report the case for the orders of the Governor General in Council.

(2) Every such report shall state—

(i) the nature and the circumstances of the offences in which the members of the criminal tribe are believed to have been concerned, and the reasons for such belief;

(ii) whether such criminal tribe follows any lawful occupation, and whether such occupation is in the opinion of the Local Government the real occupation of such criminal tribe, or a pretence for the purpose of facilitating the commission of crimes, and the grounds on which such opinion is based;

(iii) the area to which it is proposed to restrict the movements of such criminal tribe, or the place of residence in which it is proposed to settle it; and

(iv) the manner in which it is proposed that such criminal tribe shall earn its living within the restricted area or in the settlement, and the arrangements which are proposed to be made therefor.

[Cf. Act, ss. 5, 13 and 14.] 12. If on the consideration of any such report the Governor General in Council is satisfied—

Notification restricting movements of, or settling tribe.

(a) that it is expedient to restrict the movements of such criminal tribe, or to settle it in a place of residence, and

(b) that the means by which it is proposed that such criminal tribe shall earn its living are adequate,

he may authorize the Local Government to publish in the local official Gazette a notification declaring that such criminal tribe shall be restricted in its movements to the area specified or shall be settled in the place of residence specified, and the Local Government may publish a notification accordingly.

13. The Local Government may at any time [Cf. Act, ss. 14.] by a like notification vary the terms of any notification published by it under

specified area or place of residence.

another area to which the movements of the criminal tribe shall be restricted, or another place of residence in which it shall be settled.

14. Every registered member of a criminal [New.] tribe, whose movements

Verification of presence of members of tribe within prescribed area or place of residence, shall attend at such place and

at such time and before such person as may be prescribed in this behalf.

15. When the area to which the movements [Cf. Act, ss. 16.] of a criminal tribe or any members thereof are re-

stricted, or the place of residence in which a criminal tribe is settled, is situated in a district other than that in which the register mentioned in section 4 was prepared, the register shall be transferred to the Superintendent of Police of the district in which the said area is situated, and the District Magistrate of the said district shall thereupon be empowered to exercise the powers provided in sections 7, 8 and 9.

Settlements and Schools.

16. The Governor General in Council or the [Cf. Act, ss. 17.] Local Government may es-

Power to place tribe in settlement. tablish industrial, agricultural or reformatory settle- ments and may place therein any criminal tribe or any part thereof, in respect of which a notification has been published under section 12.

17. (1) The Local Government may establish [Cf. Act, ss. 17A.] industrial, agricultural or

Power to place children in schools and to reformatory schools for children and may separate and remove from their parents or guardians and place in such schools the children of members of any criminal tribe in respect of which a notification has been published under section 12.

(2) For every school established under sub-section (1), a Superintendent shall be appointed by the Local Government.

(3) The provisions of sections 18 to 22 (both *VIII. of 1897.*) inclusive) of the Reformatory Schools Act, 1897, shall, so far as may be, apply in the case of every school for children established under this section as if the Superintendent of such school were a Superintendent and the children placed in such school were youthful offenders within the meaning of that Act.

*The Criminal Tribes Bill.**(Settlements and Schools. Rules. Penalties and Procedure.)*

(4) For the purposes of this section the term "children" includes all persons under the age of eighteen and above the age of six years.

(5) The decision of the District Magistrate as to the age of any person for the purposes of this section shall be final.

[New.]

18. The Local Government may at any time, by general or special order, direct any person who may be in any industrial, agricultural or reformatory settlement or school in the Province,

(a) to be discharged, or

(b) to be removed to some other like settlement or school in the Province.

[New.]

19. The Governor General in Council may, by like order, direct that any person to whom the provisions of section 16 or section 17 are applicable may be placed in, or transferred to, any industrial, agricultural or reformatory settlement or school in any part of British India.

Rules.

[Cf. Act, s. 18.]

20. (1) The Local Government may make rules to carry out the purposes and objects of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for and regulate—

- (a) the form and contents of the register prescribed in section 4;
- (b) the mode in which the notice prescribed in section 5 shall be published and the means by which the persons whom it concerns, and the village-headmen, village-watchmen and landowners or occupiers of the village in which such persons reside, or the agents of such landowners or occupiers, shall be informed of its publication;
- (c) the addition of names to the register and the *erasure* of names therein, and the mode in which the notice prescribed in section 7 shall be given;
- (d) the mode in which persons mentioned in section 10 shall report themselves, or notify their residence or any change or intended change of residence or any absence or intended absence;
- (e) the nature of the restrictions to be observed by persons whose movements have been restricted by notification under section 12 or section 13;

- (f) the conditions as to holding passes under which persons may be permitted to leave the place in which they are settled or confined or the area to which their movements are restricted;
- (g) the conditions to be inserted in any such pass in regard to—
 - (i) the places where the holder of the pass may go or reside;
 - (ii) the persons before whom, from time to time, he shall be bound to present himself; and
 - (iii) the time during which he may absent himself;
- (h) the place and time at which and the persons before whom members of a criminal tribe shall attend in accordance with the provisions of section 14;
- (i) the inspection of the residences and villages of any criminal tribe;
- (j) the terms upon which registered members of criminal tribes may be discharged from the operation of this Act;
- (k) the management, control and supervision of industrial, agricultural or reformatory settlements and schools;
- (l) the works on which, and the hours during which, persons placed in an industrial, agricultural or reformatory settlement shall be employed, the rate at which they shall be paid, and the disposal, for the benefit of such persons, of the surplus proceeds of their labour; and
- (m) the discipline to which persons endeavouring to escape from any industrial, agricultural or reformatory settlement or school, or otherwise offending against the rules for the time being in force, shall be subject, the periodical visitation of such settlement or school and the removal from it of such persons as it shall seem expedient to remove.

Penalties and Procedure.

21. Whoever, being a member of a criminal [Cf. Act, s. 9.]

tribe, without lawful excuse, fails to comply with the terms of notice under section 5 or 7, or the burden of proving which shall lie upon him,—

- (a) fails to appear in compliance with a notice issued under section 5 or section 7, or
- (b) intentionally omits to furnish any information required under those sections, or,
- (c) when required to furnish information under either of those sections, furnishes as true any information which he knows or has reason to believe to be false, or

*The Criminal Tribes Bill.**(Penalties and Procedure.)*

(d) refuses to allow his finger-impressions to be taken,

may be arrested without warrant, and shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

[Cf. Act, s. 22.] (1) Whoever, being a registered member of a criminal tribe, violates a rule made under clause (e), clause (f) or clause (g) of section 20 shall be punishable with imprisonment for a term which may extend,—

- (a) on a first conviction, to one year,
- (b) on a second conviction, to two years, and
- (c) on any subsequent conviction, to three years.

(2) Whoever, being a registered member of a criminal tribe, violates a rule made under any other clause of section 20 shall be punishable,—

- (a) on a first conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both; and
- (b) on any subsequent conviction, with imprisonment for a term which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

[Cf. Act, s. 23.] (1) Whoever, being a member of any criminal tribe, and, having been convicted of any of the offences under the Indian Penal Code specified in the schedule, is hereafter convicted of the same or any other offence specified in the said schedule, shall, in the absence of special reasons to the contrary to be mentioned in the judgment of the Court, be punished,—

- (a) on a second conviction, with imprisonment for a term of not less than seven years, and
- (b) on a third conviction, with transportation for life.

(2) Nothing in this section shall affect the liability of such person to any further or other punishment to which he may be liable under the Indian Penal Code or any other law.

[Cf. Act, s. 24.] (1) Whoever, being a registered member of any criminal tribe, is found registered members of in any place under such circumstances as to satisfy the Court—

(a) that he was about to commit, or aid in the commission of, theft or robbery, or

(b) that he was waiting for an opportunity to commit theft or robbery,

shall be punishable with imprisonment for a term which may extend to three years, and shall also be liable to fine which may extend to one thousand rupees.

[Cf. Act, s. 25.] (1) Whoever, being a registered member of a criminal tribe,—

[Arrest of registered person found beyond prescribed limits.]

(a) is found in any part of British India, beyond the area, if any, prescribed for his residence, without the prescribed pass, or in a place or at a time not permitted by the conditions of his pass; or

(b) escapes from an industrial, agricultural or reformatory settlement or school,

may be arrested without warrant by any police-officer, *village headman* or village-watchman, and taken before a Magistrate, who, on proof of the facts, shall order him to be removed to the district in which he ought to have resided or to the reformatory settlement or school from which he has escaped (as the case may be), there to be dealt with in accordance with this Act or any rules made thereunder.

(2) The rules for the time being in force for the removal of prisoners shall apply to all persons removed under this section or under any other provision of this Act :

Provided that an order from the Local Government or from the Inspector General of Prisons shall not be necessary for the removal of such persons.

[Cf. Act, s. 26.] (1) Every village-headman and village-watchman in a village in

[Duties of village-headmen, village-watchmen, and owners or occupiers of land to give information in certain cases.]

which any persons belonging to a criminal tribe reside, and every owner or occupier of land on which any such persons reside or

the agent of any such owner or occupier, shall forthwith communicate to the officer in charge of the nearest police-station any information which he may obtain of—

(a) the failure of any such person to appear and give information as directed in section 5; or

(b) the departure of any registered member of a criminal tribe from such village or from such land (as the case may be).

(2) Every village-headman and village-watchman in a village, and every owner or occupier of land or the agent of such owner or occupier,

The Criminal Tribes Bill.

(Penalties and Procedure. Supplemental. The Schedule.)

shall forthwith communicate to the officer in charge of the nearest police-station any information which he may obtain of the arrival at such village or on such land (as the case may be) of any persons who may reasonably be suspected of belonging to any criminal tribes.

[*of. Act. s. 27.* Any village-headman, village-watchman, owner or occupier of land or the agent of such owner or occupier, who fails to comply with the requirements of section 26, shall be deemed to have committed an offence punishable under the first part of section 176 of the Indian Penal Code.

Supplemental.

[*of. Act. s. 28.* No Court of justice shall question the validity of any notification published under the provisions of section 3, section 12 or section 13 on the ground that the provisions hereinbefore contained or any of them have not been complied with, or entertain in any form whatever the question whether they have been complied with; but every such notification shall be conclusive proof that it has been issued in accordance with law.

XXVII of 1871. VII of 1876. II of 1897. Repeals. The Criminal Tribes Act, 1871, the Criminal Tribes (Amendment) Act, 1876, and the Criminal Tribes (Amendment) Act, 1897, are hereby repealed.

THE SCHEDULE.

(See section 23.)

CHAPTER XII.

SECTIONS.

- 281. Counterfeiting coin.
- 282. Counterfeiting Queen's coin.
- 283. Making or selling instrument for counterfeiting coin.
- 284. Making or selling instrument for counterfeiting Queen's coin.
- 285. Possession of instrument or material for the purpose of using the same for counterfeiting coin.
- 289. Delivery of coin, possessed with the knowledge that it is counterfeit.

SECTIONS.

- 240. Delivery of Queen's coin possessed with the knowledge that it is counterfeit.
- 242. Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.
- 243. Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.

CHAPTER XVI.

- 299. Culpable homicide.
- 307. Attempt to murder.
- 308. Attempt to commit culpable homicide.
- 310. Being a thug.
- 322. Voluntarily causing grievous hurt.
- 324. Voluntarily causing hurt by dangerous weapons or means.
- 326. Voluntarily causing grievous hurt by dangerous weapons or means.
- 327. Voluntarily causing hurt to extort property or to constrain to an illegal act.
- 328. Causing hurt by means of poison, etc., with intent to commit an offence.
- 329. Voluntarily causing grievous hurt to extort property or to constrain to an illegal act.
- 332. Voluntarily causing hurt to deter public servant from his duty.
- 333. Voluntarily causing grievous hurt to deter public servant from his duty.
- 369. *Kidnapping child under ten years with intent to steal from its person.*

CHAPTER XVII.

- 382. Theft after preparation made for causing death, hurt or restraint, in order to the committing of the theft.
- 383. Extortion.
- 385. Putting person in fear of injury in order to commit extortion.
- 386. Extortion by putting a person in fear of death or grievous hurt.
- 387. Putting person in fear of death or of grievous hurt in order to commit extortion.
- 390. Robbery.
- 391. Dacoity.
- 393. Attempt to commit robbery.
- 394. Voluntarily causing hurt in committing robbery.
- 397. Robbery or dacoity, with attempt to cause death or grievous hurt.

*The Criminal Tribes Bill.**(The Schedule.)*

SECTIONS.

- 398. Attempt to commit robbery or dacoity when armed with deadly weapon.
- 399. Making preparation to commit dacoity.
- 402. Assembling for purpose of committing dacoity.
- 457. Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.

SECTIONS.

- 458. Lurking house-trespass or house-breaking by night after preparation for hurt, assault or wrongful restraint.
- 459. Grievous hurt caused whilst committing lurking house-trespass or house-breaking.
- 460. All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them.

J. M. MACPHERSON,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill to amend the Indian Ports Act, 1908, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 24th January 1911:—

We, the undersigned, Members of the Select Committee to which the Bill to amend the

From Secretaries, Southern India Chamber of Commerce, Madras, No. 224-D., dated 23rd November 1910; from Government, Eastern Bengal and Assam, No. 136—J. L., dated 26th November 1910; from Government, Burma, No. 831-M.—6-P.-10, dated 24th November 1910; from Government, Madras, No. 377 (Marine), dated 28th November 1910 [Papers No. 1].

From Government, Bengal, No. 2931 Marine, dated 7th December 1910 [Paper No. 2].

From Government, Bombay, No. 6177 (General), dated 10th December 1910 [Paper No. 3].

Indian Ports Act, 1908, was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

2. We have corrected what appears to be a clerical error in sub-clause (iii) of the new clause (p) by substituting the words "on board" for the word "of" before the words "such vessels".

3. In sub-clause (vi) of the same clause, after the word "hospital", we have inserted the words "or other place approved by the health-officer", to provide for cases where there may be no regular hospital, and also to enable the health-officer, where he thinks this course desirable, to permit persons to be detained elsewhere than in the hospital.

4. The publication ordered by the Council has been made as follows:—

<i>Gazette.</i>	<i>In English.</i>	<i>Date.</i>
Gazette of India		22nd October 1910.
Fort Saint George Gazette		1st November 1910.
Bombay Government Gazette		27th October 1910.
Calcutta Gazette		2nd November 1910.
Burma Gazette		12th November 1910.
Eastern Bengal and Assam Gazette		2nd November 1910.
Sind Official Gazette		27th October 1910.

5. We think that the Bill has not been so altered as to require re-publication, and we recommend that it be passed as now amended.

S. H. BUTLER.

SYED ALI IMAM.

C. W. N. GRAHAM.

MG. BAH TOO.

N. SUBBA RAO.

C. P. LUKIS.

R. G. MONTEATH.

H. LEMESURIER.

L. PORTER.

[AS AMENDED BY THE SELECT COMMITTEE.]

[The portions printed in italics denote the alterations proposed by the Select Committee.]

A Bill to amend the Indian Ports Act, 1908.

WHEREAS it is expedient to amend the Indian Ports Act, 1908; It is hereby enacted as follows:—

1. This Act may be called the Indian Ports (Amendment) Act, 1911.
Short title.

2. For clause (p) of section 6, sub-section (1),
Amendment of sec- of the Indian Ports Act,
tion 6, Act XV, 1908. 1908, the following shall
be substituted, namely:—

[Cf. Public
Health Act,
1904, s. 1.
S. 130,
Public
Health
Act, 1875.]

"(p) subject to the control of the Governor General in Council, for the prevention of danger arising to the public health by the introduction and the spread of any infectious or contagious disease from vessels arriving at, or being in, any such port, and for the prevention of the conveyance of infection or contagion by means of any vessel sailing from any such port, and in particular and without prejudice to the generality of this provision, for—

(i) the signals to be hoisted and the places of anchorage to be taken up by such vessels having any case, or suspected case, of any infectious or contagious

disease on board, or arriving at such port from a port in which, or in the neighbourhood of which, there is believed to be, or to have been at the time when the vessel left such port, any infectious or contagious disease;

- (ii) the medical inspection of such vessels [Cf. s. 137, and of persons on board such vessels; Public Health Act, 1875.]
- (iii) the questions to be answered and the information to be supplied by masters, [Public Health Act, 1896, s. 1] pilots and other persons on board such vessels; (b.)
- (iv) the detention of such vessels and of [Public Health Act, 1896, s. 1] persons on board such vessels; (c.)
- (v) the duties to be performed in cases of [Public Health Act, 1896, s. 1] any such disease by masters, pilots and other persons on board such vessels; (d.)
- (vi) the removal to hospital or other place approved by the health-officer and the detention therein of any person from any such vessel who is suffering or suspected to be suffering from any such disease;
- (vii) the cleansing, ventilation and disinfection of such vessels or any part thereof and of any articles therein likely to retain infection or contagion, and the destruction of rats or other vermin in such vessels; and [Cf. s. 110, Public Health Act, 1896, s. 2, Public Health Act, 1885.]
- (viii) the disposal of the dead on such vessels; and "

J. M. MACPHERSON,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill further to amend the Indian Tramways Act, 1886, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 24th January 1911 :—

WE, the undersigned, Members of the Select Committee to which the Bill further to

From High Court, Calcutta, No. 2695, dated 12th August 1910; from Agent to Governor General and Chief Commissioner in Baluchistan, No. 1021-Z., dated 11th August 1910; from Agent to Governor General and Chief Commissioner, North-West Frontier Province, No. 996-N., dated 5th August 1910 [Papers No. 1].

From Chief Commissioner, Coorg, No. 1728, dated 17th August 1910; from Chief Commissioner, Ajmer-Merwara, No. 1292, dated 8th September 1910; from Chief Commissioner, Central Provinces, No. 1966-V.—4-8, dated 13th September 1910 [Papers No. 2].

From Government, Eastern Bengal and Assam, No. 1037-R., dated 17th September 1910; from Government, Punjab, No. 2562, dated 22nd September 1910, and enclosure [Papers No. 3].

From Government, Burma, No. 97-M.—1-T-51, dated 27th September 1910 [Paper No. 4].

From Government, Bengal, No. 884-T. M., dated 24th September 1910; from Government, Madras, No. 1022-W., dated 27th September 1910; from Government, Bombay, No. 4785, dated 28th September 1910; from Government, United Provinces, No. 776-R.—483, dated 29th September 1910 [Papers No. 5].

2. We have amplified the last words of clause (c) of the new definition of "tramway" proposed by clause 2 of the Bill in the manner suggested by the Government of Bombay so as to make the meaning clearer.

3. As one of the objects of the Bill was to remove the doubts which existed as to whether the term "mechanical power" as used in the Indian Tramways Act, 1886, included electrical power, we have thought it advisable to change the form of the amendments suggested by clauses 3, 5 and 6 of the Bill in section 3, clause (9), section 7, sub-section (2), and section 24, sub-section (1), clause (e), of the Act by inserting the words "or electrical power" in those sections after, instead of before, the words "or any other mechanical power".

4. The further amendments of the Indian Tramways Act, 1886, proposed by the Government of Madras are beyond the scope of the Bill as introduced and have therefore not been considered by us.

5. The publication ordered by the Council has been made as follows :—

*In English.**Gazette.**Date.*

Gazette of India	.	23rd July 1910.
Fort Saint George Gazette	.	2nd August 1910.
Bombay Government Gazette	.	28th August 1910.
Calcutta Gazette	.	3rd August 1910.
United Provinces Gazette	.	30th July 1910.
Punjab Government Gazette	.	5th August 1910.
Burma Gazette	.	13th August 1910.
Eastern Bengal and Assam Gazette	.	10th August 1910.
Central Provinces Gazette	.	30th July 1910.
Coorg District Gazette	.	1st September 1910.

In the Vernaculars.

<i>Province.</i>	<i>Language.</i>	<i>Date.</i>
Madras	Tamil	30th August 1910.
	Telugu	
	Kanarese	
	Malayalam	
Bombay	Marathi	15th September 1910.
	Gujarathi	
	Kanarese	
Pengal	Hindi	3rd August 1910.
	Uriya	18th August 1910.
	Bengali	
United Provinces Gazette	Urdu	6th September 1910.
	Kanarese	
Coorg		10th September 1910.
		1st October 1910.

6. We think that the Bill has not been so altered as to require re-publication and we recommend it be passed as now amended.

T. R. WYNNE.

SYED ALI IMAM.

B. C. MAHTAB or BURDWAN.

P. N. RAY or DIGHAPATIA.

UMAR HAYAT.

LIONEL JACOB.

H. G. GRAVES.

The 11th January 1911.

[AS AMENDED BY THE SELECT COMMITTEE.]

[The portions printed in italics denote the alterations proposed by the Select Committee.]

A Bill further to amend the Indian Tramways Act, 1886.

WHEREAS it is expedient further to amend the Indian Tramways Act, 1886; It is hereby enacted as follows:—

1. This Act may be called the Indian Tramways (Amendment) Act, 1911.

2. For section 3, clause (5), of the Indian Tramways Act, 1886, the following shall be substituted, namely:—

“(5) ‘tramway’ means a tramway having one, two or more rails, and includes—

(a) any part of a tramway, or any siding, turn-out, connection, line or track belonging to a tramway;

(b) any electrical equipment of a tramway; and

(c) any electric supply-line transmitting power from a generating station or sub-station to a tramway or from a generating station to a sub-station from which power is transmitted to a tramway.”

3. In section 3, clause (9), of the said Act, after the words “mechanical power” the words “or electrical power” and after the word “produc-

ing” the words “or utilising” shall be inserted.

4. For section 7, sub-section (2), clause (e), Substitution of new clause (e) in section 7 of the said Act, the following shall be substituted, (2), Act XI of 1886. namely:—

“(e) the space which shall ordinarily intervene between the outside of the carriage way on either side of a road whereon the tramway is to be constructed, and—

(i) in the case of a tramway having one rail, the rail of the tramway, or
(ii) in the case of a tramway having two or more rails, the nearest rail of the tramway,
and the conditions on which a smaller space may be permitted.”

5. In section 7, sub-section (2), clause (m), of Amendment of clause (m) of section 7 (2), “mechanical power” the Act XI of 1886. words “or electrical power” shall be inserted.

6. In section 24, sub-section (1), clause (e), of Amendment of clause (e) of section 24 (1), “mechanical power” the Act XI of 1886. words “or electrical power” shall be inserted.

7. In section 44 of the said Act, after the word “engine-sheds” the words “electrical generating stations or sub-stations” shall be inserted.

J. M. MACPHERSON,
Secretary to the Government of India

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill to consolidate and amend the law relating to the government of His Majesty's Native Indian Forces was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 24th January 1911:—

We, the undersigned, Members of the Select Committee to which the Bill to consolidate and amend the law relating to the government of His Majesty's Native Indian Forces was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

From Government, Punjab, No. 2573-S. (Home), dated 23rd September 1910; from Chief Commissioner, Central Provinces, No. C.-580, dated 23rd September 1910, and enclosure [Papers No. 1].

From High Court, Calcutta, No. 3001, dated 6th September 1910; from General Officer Commanding Southern Army, No. 4549, dated 8th September 1910; from General Officer Commanding Northern Army, No. 572-J., dated 8th September 1910 [Papers No. 2].

From Government, Eastern Bengal and Assam, No. 123-J. L., dated 25th September 1910; from Chief Commissioner, Coorg, No. 1966, dated 26th September 1910; from Agent to Governor-General and Chief Commissioner in Baluchistan, No. 4625, dated 27th September 1910; from Government, Madras, No. 892, dated 27th September 1910; from Government, Burma, No. 1395-I.—1L.-35, dated 29th September 1910, and enclosure; from Government, Bombay, No. 4810, dated 30th September 1910; from Government, Bengal, No. 3020-P. D., dated 30th September 1910; from Government, United Provinces, No. 1529, dated 7th September 1910; from Chief Commissioner, Ajmere-Merwara, No. 1491, dated 11th September 1910; from Government, United Provinces, No. 1570, dated 13th October 1910, and enclosures [Papers No. 3].

From Chief Commissioner and Agent to Governor General, North-West Frontier Province, No. 1789-G., dated 3rd November 1910, and enclosures [Papers No. 4].

2. We have considered the suggestion made by many of those who have expressed opinions on the Bill that the word "Native" should be omitted from the preamble and from other places in the Bill. We should have been ready to give effect to this suggestion had the law permitted us to do so. But the power to legislate for Indian troops outside of India depends on the terms of section 73 of the Government of India Act, 1833, and we fear that legal difficulties might arise if the language of that Statute, which has always hitherto been followed, were now departed from by the omission of the word to which objection is taken.

3. We have amended clause 2 (1) (c) of the Bill so as to cover the case of Native followers attached to British regiments.

4. We have amended clause 3, sub-clause (1), so as to make it clear that the status to be conferred under the power contained therein is a personal status, and does not give any power of command over others.

5. We have simplified the definitions of "corps" and "enemy" contained in clause 7.

6. We have amended Chapter III by excluding non-penal discharge from the scope of the Bill, leaving it to be dealt with by rules made under the proposed Act, thus limiting the provisions of the Bill itself to dismissal which is equivalent to penal discharge. This is in conformity with the procedure laid down in the Army Act and is, we think, an improvement both in form and substance.

7. We have amended clause 20 (now 19) by the addition of a new sub-clause giving power to a Commanding Officer to reduce an acting non-commissioned officer. This is a power which he exercises at present but of which he would be deprived under the definition of non-commissioned officer which has been adopted in the Bill.

8. We think the opinion expressed in the papers submitted to us that imprisonment in military custody up to 28 days should be a minor punishment is well founded, and we have suggested an amendment of clause 21 (2) (a) (now 20) to give effect to this, following a recent amendment of the Army Act.

[AS AMENDED BY THE SELECT COMMITTEE.]

THE INDIAN ARMY BILL.

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*The Indian Army Bill.**(Chapter I.—Preliminary.)*

[The portions printed in italics denote the alterations proposed by the Select Committee.]

[AS AMENDED BY THE SELECT COMMITTEE.]

A Bill to consolidate and amend the law relating to the government of His Majesty's Native Indian Forces.

WHEREAS it is expedient to consolidate and amend the law relating to the government of the Native officers, soldiers and other persons in His Majesty's Indian Forces; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Indian Army Act, 1911.

(2) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, direct in this behalf.

Application of Act.

[Part 1 (a).] **2. (1)** The following persons shall be subject to this Act, namely:—

- (a) Native officers and warrant officers;
- (b) persons enrolled under this Act;
- (c) persons not otherwise subject to military law, who, on active service, in camp, on the march, or at any frontier post specified by the Governor General in Council by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, His Majesty's Forces:

Provided that if any person claims to belong to a class to which the Army Act is, and this Act is not, applicable, the burden of proving that he belongs to that class shall lie upon him.

[A. A. 92 (1).] **(2)** Every person subject to this Act under sub-section (1), clause (a) or (b), shall remain so subject until duly discharged or dismissed.

[Draft 2 (1).] **3. (1)** The Governor General in Council

[2 & 3.] Special provision as to rank in certain cases. may, by notification, direct that any persons or class of persons subject to this Act under section 2, sub-section (1), clause (c), shall be so subject as Native officers, warrant officers or non-commissioned officers, and may authorize any officer to give a like direction with respect to any such person and to cancel such direction.

[Draft 2 (4).] **(2)** All persons subject to this Act other than officers, warrant officers and non-commissioned officers shall, if they are not persons in respect of whom a notification or direction under sub-section (1) is in force, be deemed to be of a rank inferior to that of a non-commissioned officer.

4. Every person subject to this Act under [2 (6).]

Commanding officer of section 2, sub-section (1), clause (c), shall, for persons subject to military law under section 2, the purposes of this clause (c).

Act, be deemed to be under the commanding officer of the corps, department or detachment (if any) to which he is attached, and if he is not attached to any corps, department or detachment, under the command of any officer who may for the time being be named as his commanding officer by the officer commanding the force with which such person may for the time being be serving, or of any other prescribed officer, or, if no such officer is named or prescribed, under the command of the said officer commanding the force:

Provided that an officer commanding a force shall not place a person under the command of an officer of official rank inferior to that of such person if there is present at the place where such person is any officer of higher rank under whose command he can be placed.

5. (1) The Governor General in Council

[191.] may, by notification, apply all or any of the powers to apply Act to certain forces under the Government of India. apply all or any of the provisions of this Act to any force raised and maintained in India under the authority of the Governor General in Council.

(2) While any of the provisions of this Act apply to any such force, the Governor General in Council may, by notification, direct by what authority any jurisdiction, powers or duties incident to the operation of these provisions shall be exercised or performed in respect of that force.

6. (1) Whenever persons subject to this Act

[Draft 162.] are serving out of India Officers to exercise powers in case of foreign service. under an officer not subject to the authority of the Governor General in Council, the Governor General in Council may prescribe the officer by whom the powers which, under this Act, may be exercised by officers commanding armies, divisions and brigades, shall, as regards such persons, be exercised.

(2) The Governor General in Council may confer such powers either absolutely, or subject to such restrictions, reservations, exceptions and conditions as he may think fit.

Definitions.

7. In this Act, unless there is something repugnant in the subject or context,—

(1) "British officer" means a person holding a commission in His Majesty's land forces:

(2) "Native officer" means a person commissioned, gazetted or in pay as an officer holding a Native rank in His Majesty's Indian Forces:

(3) "warrant officer" means a person appointed, gazetted or in pay as a Native warrant officer in His Majesty's Indian Forces:

*The Indian Army Bill.**(Chapter I.—Preliminary. Chapter II.—Enrolment and Attestation.)*

[New.]

(4) "non-commissioned officer" means a person attested under this Act holding a Native non-commissioned rank in His Majesty's Indian Forces, and includes an acting non-commissioned officer:

(5) "officer" means a British officer or Native officer, but does not include a warrant officer or non-commissioned officer:

(6) "commanding officer," when used in any provision of this Act with reference to any separate portion of His Majesty's forces or to any department, means the British officer whose duty it is under the regulations of the army, or, in the absence of any such regulation, by the custom of the service, to discharge with respect to that portion of the forces or that department the functions of commanding officer in regard to matters of the description referred to in that provision:

(7) "superior officer," when used in relation to a person subject to this Act, includes a warrant officer and a non-commissioned officer; and, as regards persons placed under his orders, a warrant officer or non-commissioned officer

44 & 45 Vict, subject to the Army Act:

c. 58.

[New.]

(8) "army," "division" and "brigade" mean respectively an army, division or brigade which is under the command of an officer subject to the authority of the Governor General in Council:

(9) "corps" means any separate body of persons subject to this Act or the Army Act which is prescribed as a corps for the purposes of all or any of the provisions of this Act:

[New.]

(10) "independent brigade" means a brigade which does not form part of a division:

(11) "department" includes any division or branch of a department:

(12) "enemy" includes all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of a person subject to military law to act:

(13) "active service," as applied to a person subject to this Act, means the time during which such person is attached to, or forms part of, a force which is engaged in operations against an enemy, or is engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or is in military occupation of any foreign country:

(14) "military custody" means the arrest or confinement of a person according to the usages of the service:

(15) "military reward" includes any gratuity or annuity for long service or good conduct, any good conduct pay, good service pay or pension, and any other military pecuniary reward:

(16) "court-martial" means a court-martial held under this Act:

(17) "criminal court" means a court of ordinary criminal justice in British India, or estab-

lished elsewhere by the authority of the Governor General in Council:

(18) "civil offence" means an offence which, if committed in British India, would be triable by a criminal court:

(19) "offence" means any act or omission punishable under this Act, and includes a civil offence as hereinbefore defined:

(20) "notification" means a notification published in the Gazette of India:

(21) "prescribed" means prescribed by rules made under this Act: and

(22) all words and expressions used herein and defined in the Indian Penal Code and not ^{XLV of 1860} hereinbefore defined shall be deemed to have the meanings respectively attributed to them by that Code.

CHAPTER II.**ENROLMENT AND ATTESTATION.***Enrolment.*

8. Upon the appearance before the prescribed

[Draft 1 (1).]

Procedure before enrolling officer of any person desirous of being enrolled.

enrolling officer shall read and explain to him, or cause to be read and explained to him in his presence, the conditions of the service for which he is to be enrolled; and shall put to him the questions set forth in the prescribed form of enrolment, and shall, after having cautioned him that if he makes a false answer to any such question he will be liable to punishment under this Act, record or cause to be recorded his answer to each such question.

9. If, after complying with the provisions

[Draft 1 (1).]

of section 8, the enrolling officer is satisfied that the person desirous of being enrolled fully understands the questions put to him and consents to the conditions of service, and if he perceives no impediment, he shall sign the enrolment paper, and the person shall then be deemed to be enrolled.

10. Every person who has for the space of

[Act V of 1875, s. 1.]

six months been in the receipt of military pay and been borne on the

rolls of any corps or department (of which the last pay statement, if produced, shall be evidence) shall be deemed to have been duly enrolled, and shall not be entitled to claim his discharge on the ground of illegality or irregularity in his enrolment.

Attestation.

11. The following persons shall be attested,

[Draft 1 (2).]

Persons to be attested. namely:—

(a) all persons enrolled as combatants;

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(*Chapter II.—Enrolment and Attestation. Chapter III.—Dismissal and discharge. Chapter IV.—Summary Reduction and Punishments otherwise than by order of Court-martial.*)

(b) all other enrolled persons prescribed by the Governor General in Council.

[Draft 1 (1).] **12.** (1) When a person who is to be attested is reported fit for duty, or has completed the prescribed period of probation, an oath or affirmation shall be administered to him in the prescribed form by his commanding officer in front of his corps or such portion thereof or such members of his department as may be present or by any other prescribed person.

[1 (4).] (2) The form of oath or affirmation prescribed under this section shall contain a promise that the person to be attested will be faithful to His Majesty, His heirs and successors, and that he will serve in His Majesty's Indian Forces and go wherever he is ordered by land or sea, and that he will obey all commands of any officer set over him, even to the peril of his life.

[Draft 1 (4).] (3) The fact of an enrolled person having taken the oath or affirmation directed by this section to be taken shall be entered on his enrolment paper, and authenticated by the signature of the officer administering the oath or affirmation.

CHAPTER III.

DISMISSAL AND DISCHARGE.

[3 and 4 (1) (b).] **13.** The Governor General in Council or the Commander-in-Chief in India may dismiss from the service any person subject to this Act.

Dismissal by Governor General in Council and Commander-in-Chief in India.

[cf. 4 (1) (b).] **14.** An officer commanding an army, division or brigade, or any prescribed officer, may dismiss from the service any person serving under his command other than a Native officer.

[155.] **15.** Every person sentenced by any court-martial or by any criminal court to transportation or to rigorous imprisonment for any term exceeding three months, shall be dismissed from the service by his commanding officer:

Provided that on active service any such person may be retained to serve in the ranks, and his service therein shall be reckoned as part of his term of transportation or imprisonment.

16. The prescribed authority may, in conformity with any rules prescribed in this behalf, discharge from the service any person subject to this Act.

[6.] **17.** Every enrolled person who is dismissed or discharged from the service shall be furnished by his commanding officer with a certificate, in the English language and in the mother tongue of such person (when his mother tongue is not English), setting forth—

- (a) the authority dismissing or discharging him;
- (b) the cause of his dismissal or discharge;
- (c) the full period of his service in the army.

[Draft 6 (1) and (2).] **18.** (1) Any person enrolled under this Act who is entitled under Discharge, etc., out of the conditions of his enrolment to be discharged, or whose discharge is ordered by competent authority, and who, when he is so entitled or ordered to be discharged, is serving out of India, and requests to be sent to India, shall, before being discharged, be sent to India with all convenient speed.

(2) Any person enrolled under this Act who is dismissed from the service and who, when he is so dismissed, is serving out of India, shall be sent to India with all convenient speed.

(3) If any such person has been sentenced by court-martial to any punishment, such punishment may be inflicted before he is sent to India.

CHAPTER IV.

SUMMARY REDUCTION AND PUNISHMENTS OTHERWISE THAN BY ORDER OF COURT-MARTIAL.

[164.] **19.** (1) The Commander-in-Chief in India, an officer commanding an army, division or brigade, or any prescribed officer, may reduce to a lower grade or to the ranks any non-commissioned officer under his command.

(2) The commanding officer of an acting non-commissioned officer may order him to revert to his permanent grade as a non-commissioned officer or, if he has no permanent grade above the ranks, to the ranks.

20. (1) The Commander-in-Chief in India may, subject to the control of the Governor General in Council, specify the minor punishments to which persons subject to this Act shall be liable without the intervention of a court-martial, and the officer or officers by whom, and the extent to which, such minor punishments may be awarded.

(2) Imprisonment in military custody may be specified as such a minor punishment, provided that—

- (a) the term of such imprisonment shall not exceed twenty-eight days; and

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(*Chapter IV.—Summary Reduction and Punishments otherwise than by order of Court-martial. Chapter V.—Offences.*)

(b) it shall not be awarded to any person of or above the rank of non-commissioned officer, or who, when he committed the offence in respect of which it is awarded, was of or above such rank.

21. Whenever any weapon or part of a *weapon* forming part of *Collective fines.* the equipment of a *half squadron, battery, company or other similar unit* is lost or stolen, the officer commanding the army, division or independent brigade to which such *unit* belongs may, *after obtaining the report of a court of inquiry*, impose a collective fine upon the Native officers, non-commissioned officers and men of such *unit*, or upon so many of them as, in his judgment, should be held responsible for such loss or theft.

22. (1) For any offence, in breach of good order, the commanding officer of any corps or Native followers. *detachment on active service, in camp, on the march, or at any frontier post specified by the Governor General in Council by notification in this behalf at which troops are stationed, may punish any Native follower of such corps or detachment who is subject to this Act under section 2, subsection (1), clause (c)—*

(a) if such follower is not a menial servant, with imprisonment for a term which may extend to thirty days, or with fine which may extend to fifty rupees :

(b) if such follower is a menial servant, with imprisonment for a term which may extend to seven days, or, if on active service, with corporal punishment not exceeding twelve strokes of a rattan :

(2) Imprisonment awarded under this section may be carried out in a military guard, or in a jail, as ordered by the said commanding officer; and the officer in charge of any jail shall, on the delivery to him of the person of the offender, with a warrant, under the hand of the said commanding officer, detain the offender according to the exigency of the warrant or until he is discharged by due course of law.

Provost-Marshal.

23. For the prompt and instant repression of *irregularities and offences* committed in the field or on the march, provost-marshals may be appointed by the Commander-in-Chief in India or an officer commanding an army, division or independent brigade or an officer commanding the forces in the field; and the powers and duties of such provost-marshals

shall be regulated according to the established custom of war and the rules of the service.

24. (1) The duties of a provost-marshall so appointed are to take charge of prisoners confined for offences of a general description, to preserve good order and discipline, and to prevent breaches of the same by persons belonging or attached to the army.

(2) The provost-marshall may punish, corporally, then and there, any person subject to this Act below the rank of non-commissioned officer who, on active service and in his view or in the view of any of his assistants, commits any breach of good order and military discipline :

Provided that such punishment shall be limited to the necessity of the case, and shall accord with the orders which the provost-marshall may from time to time receive from the officer commanding the troops, and shall be inflicted with the regulation cat :

Provided also that the orders of the said commanding officer shall in no case authorise such corporal punishment in excess of that awardable by sentence of a court-martial.

(3) If the offender is not on active service or if the actual commission of the offence is not witnessed by the provost-marshall or any of his assistants, but sufficient proof can be obtained of the offender's guilt, he shall report the case to the officer commanding the troops, who shall deal with the case as he may deem most conducive to the maintenance of good order and military discipline.

CHAPTER V.

OFFENCES.

Offences in respect of Military Service.

25. Any person subject to this Act who commits any of the following offences, that is with death.

(a) shamefully abandons or delivers up any garrison, fortress, post or guard committed to his charge, or which it is his duty to defend; or

(b) in presence of an enemy, shamefully casts away his arms or ammunition, or intentionally uses words or any other means to induce any person subject to military law to abstain from acting against the enemy, or to discourage such person from acting against the enemy, or misbehaves in such manner as to show cowardice; or

[169.]

[14.]

[19.]

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[16.] (c) directly or indirectly holds correspondence with, or communicates intelligence to, the enemy, or any person in arms against the State, or who, coming to the knowledge of any such correspondence or communication, omits to discover it immediately to his commanding or other superior officer; or

[15.] (d) treacherously makes known the watch-word to any person not entitled to receive it; or

[17.] (e) directly or indirectly assists or relieves with money, victuals or ammunition, or knowingly harbours or protects, any enemy or person in arms against the State; or

[23.] (f) in time of war, or during any military operation, intentionally occasions a false alarm in action, camp, garrison or quarters, or spreads reports calculated to create alarm or despondency; or

[12.] (g) being a sentry in time of war or alarm, or over any State prisoner, treasure, magazine or dockyard, sleeps upon his post, or quits it without being regularly relieved or without leave; or

[20.] (h) in time of action, leaves his commanding officer or his post or party to go in search of plunder; or

[21.] (i) in time of war, quits his guard, picket, party or patrol without being regularly relieved or without leave; or

[22.] (j) in time of war or during any military operation, uses criminal force to, or commits an assault on, any person bringing provisions or other necessities to the camp or quarters of any of His Majesty's forces, or forces a safeguard, or breaks into any house or any other place for plunder, or plunders, injures or destroys any field, garden or other property of any kind;

shall, on conviction by court-martial, be punished with death, or with such less punishment as is in this Act mentioned.

26. Any person subject to this Act who commits any of the following offences, that is to say,—

Offences not punishable with death.

[27.] (a) strikes, or forces or attempts to force, any sentry; or

[46.] (b) in time of peace, intentionally occasions a false alarm in camp, garrison or cantonment; or

[13.] (c) being a sentry, or on guard, plunders or wilfully destroys or injures any property placed under his charge or under charge of his guard; or

[50.] (d) being a sentry, in time of peace, sleeps upon his post, or quits it without being regularly relieved or without leave;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Mutiny and Insubordination.

27. Any person subject to this Act who commits any of the following offences, that is to say,—

Offences punishable with death.

[7.] (a) begins, excites, causes or joins in any mutiny; or

[7.] (b) being present at any mutiny, does not use his utmost endeavours to suppress the same; or

[7.] (c) knowing or having reason to believe in the existence of any mutiny, or of any intention to mutiny, or of any conspiracy against the State, does not, without delay, give information thereof to his commanding or other superior officer; or

[8.] (d) uses or attempts to use criminal force to, or commits an assault, on his superior officer, whether on or off duty, knowing or having reason to believe him to be such; or

[9.] (e) disobeys the lawful command of his superior officer;

shall, on conviction by court-martial, be punished with death, or with such less punishment as is in this Act mentioned.

28. Any person subject to this Act who commits any of the following offences, that is to say,—

Offences not punishable with death.

[37.] (a) is grossly insubordinate or insolent to his superior officer in the execution of his office; or

[38.] (b) refuses to superintend or assist in the making of any field-work or other military work of any description ordered to be made either in quarters or in the field; or

[39.] (c) impedes a provost-marshall or an assistant provost-marshall, or any officer or non-commissioned officer or other person legally exercising authority under or on behalf of a provost-marshall, or, when called on, refuses to assist, in the execution of his duty, the provost-marshall, assistant provost-marshall, or any such officer, non-commissioned officer or other person;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Desertion, Fraudulent Enrolment and Absence without Leave.

29. Any person subject to this Act who deserts or attempts to desert the service shall,

Desertion.

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on conviction by court-martial, be punished with death, or with such less punishment as is in this Act mentioned.

30. Any person subject to this Act who commits any of the following offences, that is to say,—

- [28.] (a) knowingly harbours any deserter, or who, knowing, or having reason to believe, that any other person has deserted, or that any deserter has been harboured by any other person, does not *without delay* give *information thereof* to his own or some other superior officer, or use his utmost endeavours to cause such deserter to be apprehended; or
- [29.] (b) knowing, or having reason to believe, that a person is a deserter, procures or attempts to procure the enrolment of such person; or
- [11.] (c) without having first obtained a regular discharge from the corps or department to which he belongs, enrolls himself in *the same or any other corps or department*; or
- [30.] (d) absents himself without leave, or without sufficient cause overstays leave granted to him; or
- [31.] (e) being on leave of absence and having received information from proper authority that *any corps or portion of a corps, or any department, to which he belongs*, has been ordered on active service, fails, without sufficient cause, to rejoin without delay; or
- [32.] (f) without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty; or
- [33.] (g) when on parade, or on the line of march, without sufficient cause or without leave from his superior officer quits the parade or line of march; or
- [34.] (h) in time of peace, quits his guard, picket or patrol without being regularly relieved or without leave; or
- [51.] (i) without proper authority is found two miles or upwards from camp; or
- [52.] (j) without proper authority is absent from his cantonment or lines after tattoo, or from camp after retreat-beating;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Disgraceful Conduct.

31. Any person subject to this Act who commits any of the following offences, that is to say,—

- [4. 61.] (a) dishonestly misappropriates or converts to his own use any money, provisions, forage, arms, clothing, ammunition, tools, instruments, equipments or military stores of any kind,

the property of Government, entrusted to him; or

- (b) dishonestly receives or retains any property in respect of which an offence under clause (a) has been committed, knowing or having reason to believe the same to have been dishonestly misappropriated or converted; or
- (c) wilfully destroys or injures any property of Government entrusted to him; or
- (d) commits theft in respect of any property of Government, or of any military mess, band or institution, or of any person subject to military law, or serving with, or attached to, the army; or
- (e) dishonestly receives or retains any such property as is specified in clause (d) knowing or having reason to believe it to be stolen; or
- (f) does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person; or
- (g) malingers or feigns or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity; or
- (h) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or any other person; or
- (i) commits any offence of a cruel, indecent or unnatural kind, or attempts to commit any such offence and does any act towards its commission;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Intoxication.

32. Any person subject to this Act who is in a state of intoxication, whether on duty or not on duty, shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Offences in relation to Persons in Custody.

33. Any person subject to this Act who, with death. Offences punishable without proper authority, releases any State prisoner, enemy or person taken in arms against the State, placed under his charge, or who negligently suffers any such prisoner, enemy or person to escape, shall, on conviction by court-martial, be punished with death, or with such less punishment as is in this Act mentioned.

34. Any person subject to this Act who, with death. Offences not punishable commits any of the following offences, that is to say,—

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[35.] (a) being in command of a guard, picquet or patrol, refuses to receive any prisoner or person duly committed to his charge; or
 (b) without proper authority releases any prisoner or person placed under his charge, or negligently suffers any such prisoner or person to escape; or
 (c) being in *military custody*, leaves such custody before he is set at liberty by proper authority;

[New. Ct.
A. A., s. 20
(2).]

[36.] shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Offences in relation to Property.

35. Any person subject to this Act who commits any of the following offences, that is to say,—

[41.] (a) commits extortion, or without proper authority exacts from any person carriage, portage or provisions; or
 [42.] (b) in time of peace, commits house-breaking for the purpose of plundering, or plunders, destroys or damages any field, garden or other property; or
 [47 (a).] (c) designedly or through neglect kills, injures, makes away with, ill-treats or loses his horse or any animal used in the public service; or
 (d) makes away with, or is concerned in making away with, his arms, ammunition, equipments, instruments, tools, clothing or regimental necessities; or
 (e) loses by neglect anything mentioned in clause (d); or
 (f) wilfully injures anything mentioned in clause (d) or any property belonging to Government, or to any military mess, band or institution, or to any person subject to military law, or serving with, or attached to, the army; or
 (g) sells, pawns, destroys or defaces any medal or decoration granted to him;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Offences in relation to False Documents and Statements.

36. Any person subject to this Act who commits any of the following offences, that is to say,—

[A.A., s.
27 (1).]
 (a) makes a false accusation against any person subject to military law, knowing such accusation to be false; or
 [167.] (b) in making any complaint under section 117, knowingly makes any false statement affecting the character of any person subject to military law, or knowingly and wilfully suppresses any material fact; or

[62.] (c) obtains or attempts to obtain for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement; or

[63.] (d) knowingly furnishes a false return or report of the number or state of any men under his command or charge, or of any money, arms, ammunition, clothing, equipments, stores or other property in his charge, whether belonging to such men or to Government or to any person in or attached to the army, or who, through design or culpable neglect, omits or refuses to make or send any return or report of the matters aforesaid;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

37. Any person having become subject to this Act who is disengaged on enrolment, and gives a wilfully false answer to any question set forth in the prescribed form of enrolment which has been put to him by the enrolling officer before whom he appears for the purpose of being enrolled, shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Offences in relation to Courts-martial.

38. Any person subject to this Act who commits any of the following offences, that is to say,—

[67.] (a) when duly summoned to attend as a witness before a court-martial, intentionally omits to attend, or refuses to be sworn or affirmed or to answer any question, or to produce or deliver up any book, document or other thing which he may have been duly warned and called upon to produce or deliver up; or
 (b) intentionally offers any insult or causes any interruption or disturbance to, or uses any menacing or disrespectful word, sign or gesture, or is insubordinate or violent in the presence of, a court-martial while sitting; or
 (c) having been duly sworn or affirmed before any court-martial or other military court competent to ad-

[62.]

[63.]

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[67.]

[68.]

[56.]

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minister an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Miscellaneous Military Offences.

39. Any person subject to this Act who commits any of the following offences, that is to say,—

- [25] (a) being an officer or warrant officer, behaves in a manner unbecoming his position and character; or
- [40.] (b) strikes or otherwise ill-treats any person subject to this Act being his subordinate in rank or position; or
- [43.] (c) being in command at any post or on the march, and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has disturbed any fair or market, or committed any riot or trespass, fails to have due reparation made to the injured person or to report the case to the proper authority; or
- [44.] (d) by defiling any place of worship, or otherwise intentionally insults the religion or wounds the religious feelings of any person; or
- [48.] (e) attempts to commit suicide and does any act towards the commission of such offence; or
- [49.] (f) being below the rank of warrant officer, when off duty, appears, without proper authority, in or about camp or cantonments, or in or about, or when going to or returning from, any town or bazar, carrying a sword, bludgeon or other offensive weapon; or
- [55.] (g) directly or indirectly, accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service; or
- [70.] (h) neglects to obey any general or garrison or other orders; or
- [70.] (i) is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and military discipline;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Abetment.

40. Every person subject to this Act who abets any offence punishable under this Act [71.] may be punished with the punishment provided in this Act for such offence.

Civil Offences.

41. Every person subject to this Act who at any place beyond [171.] Civil offences committed outside British India, or when in British India or on active service on active service in British India, commits any civil offence shall be deemed to be guilty of an offence against military law, and, if charged therewith under this section, shall, subject to the provisions of this Act, be liable to be tried for the same by court-martial, and on conviction to be punished as follows, that is to say:—

- (a) if the offence is one which would be punishable under the law of British India with death or with transportation, he shall be liable to suffer any punishment assigned for the offence by the law of British India; and
- (b) in other cases, he shall be liable to suffer any punishment assigned for the offence by the law of British India, or such punishment as might be awarded to him in pursuance of this Act in respect of an act prejudicial to good order and military discipline.

42. Every person subject to this Act who [173.] commits or attempts to Certain civil offences commit or abets the commission of an offence punishable under Chapter VI of the Indian Penal Code, or any of the following offences against any person subject to military law, that is to say, murder, culpable homicide or any offence punishable under any of the sections 323 to 335 (both inclusive), or section 506 of the said Code, shall be deemed to be guilty of an offence against military law, and, if charged under this section with any such offence, shall, subject to the provisions of this Act, be liable to be tried by court-martial, and on conviction shall be liable to suffer any punishment assigned for the offence by the said Code.

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1860.

CHAPTER VI.**PUNISHMENTS.**

43. Punishments may be inflicted in respect [Draft 78.] of offences committed by Punishments. persons subject to this Act, and convicted by court-martial, according to the scale following, that is to say:—

- (a) death;
- (b) transportation for life or for any period not less than seven years;

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- (c) imprisonment (with or without solitary confinement) for any term not exceeding fourteen years;
- (d) dismissal from the service;
- (e) in the case of officers and warrant officers, suspension from rank, pay and allowances for any stated period;
- (f) reduction, in the case of a warrant officer, to a lower grade or class (*if any*) of warrant officer, or in the case of a non-commissioned officer, to a lower grade or to the ranks;
- (g) in the case of officers, warrant officers and non-commissioned officers, forfeiture of seniority of rank;
- (h) forfeitures and stoppages as follows, namely:—
 - (i) forfeiture of service for the purpose of promotion, increased pay, pension or any other prescribed purpose;
 - (ii) forfeiture of any military decoration or military reward;
 - (iii) forfeiture, in the case of a person sentenced to dismissal from the service or whose sentence involves such dismissal, of all arrears of pay and allowances and other public money due to him at the time of such dismissal;
 - (iv) stoppages of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

[Draft 78, prov. 1.] **44.** Where in respect of any offence under this Act there is specified a particular punishment or such less punishment as is in this Act mentioned, there may be awarded in respect of that offence instead of such particular punishment (but subject to the other provisions of this Act as to punishments and regard being had to the nature and degree of the offence) any one punishment lower in the above scale than the particular punishment.

[Draft 78, prov. 5.] **45.** Where any person subject to this Act and under the rank of warrant officer—

- (a) on active service is guilty of any offence; or
- (b) at any time is guilty of the offence specified in clause (d) of section 31; or
- (c) at any time is guilty of a civil offence which would be punishable with whipping under the law of British India, and is triable by court-martial under this Act,

it shall be lawful for a court-martial to award for that offence corporal punishment not exceeding *thirty* lashes.

46. Corporal punishment shall, for the purpose of commutation, be deemed to stand in the scale of punishments next below dismissal. [Draft 78, prov. 1.]

47. A sentence of a court-martial may, in addition to or without any one other punishment, any one or more of the punishments specified in clauses (d), (f) and (h) of section 43. [Draft 78, prov. 2.]

48. Whenever any person is sentenced to [Act XLV, 1860, s. 73.] Solitary confinement rigorous imprisonment, the court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say,—

- (a) a time not exceeding one month if the term of imprisonment does not exceed six months;
- (b) a time not exceeding two months if the term of imprisonment exceeds six months and does not exceed one year;
- (c) a time not exceeding three months if the term of imprisonment exceeds one year.

49. A non-commissioned officer sentenced by [Cf. 134.] Reduction of non-commissioned officers to court-martial to transportation, imprisonment, corporal punishment or dismissal from the service, shall be deemed to be reduced to the ranks.

CHAPTER VII.**PENAL DEDUCTIONS.**

50. The following penal deductions may be made from pay and allowances of a person subject to this Act, that is to say,—

(a) all pay and allowances for every day [New. C/ A. 138.] of absence either on desertion or without leave, or as a prisoner of war, and for every day of imprisonment awarded by a criminal court, a court-martial, or an officer exercising authority under section 20;

(b) all pay and allowances for every day whilst he is in custody on a charge for an offence of which he is after-

*The Indian Army Bill.**(Chapter VII.—Penal Deductions. Chapter VIII.—Courts-martial.)*

wards convicted by a criminal court or court-martial, or on a charge of absence without leave for which he is afterwards awarded imprisonment by an officer exercising authority under section 20;

- (c) all pay and allowances for every day on which he is in hospital on account of sickness certified by the proper medical officer attending on him at the hospital to have been caused by an offence under this Act committed by him;
- (d) all pay and allowances ordered by a court-martial to be suspended or forfeited under section 43;
- (e) any sum ordered by a court-martial to be stopped under section 43;
- (f) any sum required to make good such compensation for any expenses caused by him, or for any loss of or damage or destruction done by him to any arms, ammunition, equipment, clothing, instruments, regimental necessaries or military decoration, or to any buildings or property, as may be awarded by his commanding officer;
- (g) any sum required to pay a fine awarded by a criminal court, a court-martial exercising jurisdiction under section 41 or section 42, or an officer exercising authority under section 20 or section 21:

Provided that the total deductions from the pay and allowances of a person subject to this Act made under clauses (e) to (g), both inclusive, shall not (except in the case of a person sentenced to dismissal or whose sentence involves dismissal), exceed in any one month one-half of his pay and allowances for that month.

A. A. 140
A. R. I., (a) and (b)—
Vol. I, 948.]

Explanation.—For the purposes of clauses (a) and (b)—

- (i) absence or custody for six consecutive hours or upwards, whether wholly in one day or partly in one day and partly in another, may be reckoned as absence or custody for a day;
- (ii) absence or custody for twelve consecutive hours or upwards may be reckoned as absence or custody for the whole of each day during any portion of which the person was absent or in custody; and
- (iii) any absence or custody for less than a day may be reckoned as absence or custody for a day if such absence or custody prevented the absentee from fulfilling any military duty which was thereby thrown upon some other person.

51. Any sum authorized by this Act to be [A. A. 140.] deducted from the pay money other than pay and allowances of any person may, without prejudice to any other mode of recovering the same, be deducted from any public money due to him other than a pension.

52. Any deduction from pay and allowances [A. A. 139.] authorized by this Act may be remitted in such manner and by such authority as may from time to time be prescribed.

CHAPTER VIII.**COURTS-MARTIAL.***Constitution and Dissolution of Courts-martial.*

53. For the purposes of this Act there shall [Draft 72.] be four kinds of courts-martial and the kinds thereof, that is to say:—

- (1) general courts-martial;
- (2) district courts-martial;
- (3) summary general courts-martial; and
- (4) summary courts-martial.

54. A general court-martial may be convened Power to convene general courts-martial. by the Commander-in-Chief in India, or by any officer empowered in this behalf by warrant of the Commander-in-Chief in India.

55. A district court-martial may be convened Power to convene district courts-martial. by any officer having power to convene a general court-martial, or by any officer empowered in this behalf by warrant of any such officer.

56. A warrant issued under section 54 or section 55 may contain such restrictions, reservations or conditions as the officer issuing it may think fit.

57. A general court-martial shall consist of [74.] not less than seven officers unless that number, due regard being had to the public service, is not available, in which case the court may consist of not less than five officers.

58. A district court-martial shall consist of [80.] not less than three officers.

59. Whenever a general court-martial is ordered to be composed of the smaller number of officers specified in section 57, the order convening the court shall state that the larger

[82A.]

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number of officers is not, due regard being had to the public service, available, and such statement shall be conclusive evidence of the fact so stated.

[Draft 95.] **60.** The officers composing a general or district court-martial shall, Composition of general or district courts-martial. at the discretion of the convening officer, but subject to the provisions of section 61, either be British or Native officers, but shall not be partly British and partly Native officers.

[86 (3), (4).] **61.** (1) Any person subject to this Act who Claim to trial by British officers. is under orders for trial by general or district court-martial may claim to be tried by British officers.

(2) In all cases the right of making such a claim shall, before the court is convened, be explained to the person under orders for trial by the commanding officer, or some officer deputed by him in this behalf, and, when such a claim is made, the court shall be constituted accordingly.

[90.] **62.** The following authorities shall have Convening of summary power to convene a general courts-martial. summary general court-martial, namely:—

- (a) an officer empowered in this behalf by an order of the Governor General in Council or of the Commander-in-Chief in India;
- (b) on active service, the officer commanding the forces in the field, or any officer empowered by him in this behalf;
- (c) an officer commanding any detached portion of His Majesty's troops upon active service when, in his opinion, it is not practicable, with due regard to discipline and the exigencies of the service, that an offence should be tried by an ordinary general court-martial.

[91.] **63.** A summary general court-martial shall Composition of summary general courts-martial. consist of not less than three officers.

[93.] **64.** (1) A summary Summary courts-martial. court-martial may be held—

- (a) by the commanding officer of any corps or department of His Majesty's Indian forces, or of any detachment of those forces;
- (b) by the commanding officer of any British corps or detachment to which details subject to this Act are attached.

(2) At every summary court-martial the officer holding the trial shall alone constitute the court, but the proceedings shall be attended

throughout by two other officers who shall not, as such, be sworn or affirmed.

65. (1) If a court-martial after the commencement of a trial is Dissolution of courts. reduced below the smallest number of officers of which it is by this Act required to consist, it shall be dissolved:

Provided that a general court-martial shall not be dissolved under the provisions of this sub-section unless it is reduced below five officers.

(2) If, on account of the illness of the accused before the finding, it is impossible to continue the trial, a court-martial shall be dissolved.

(3) Where a court-martial is dissolved under this section, the accused may be tried again.

Jurisdiction of Courts-martial.

66. When any person subject to this Act has Prohibition of second trial. been acquitted or convicted of an offence by a court-martial or by a criminal court, or has been summarily dealt with for an offence under section 20 or section 22, he shall not be liable to be tried again for the same offence by a court-martial or dealt with summarily in respect of it under either of the said sections.

67. No person subject to this Act shall be tried or punished by a court-martial for any offence after the expiration of three years from the date of such offence, unless the offender, by reason of absence or of some other manifest impediment, could not be arrested or confined and brought to trial within that period; in which case he shall be liable to be tried at any time not exceeding two years after such impediment has ceased.

68. Any person subject to this Act who Place of trial. commits any offence against it may be tried and punished for such offence in any place whatever.

Adjustment of the jurisdiction of Courts-martial and Criminal Courts.

69. When a criminal court and a court-martial have each Order in case of conflict. jurisdiction in respect of an offence, it shall be in the discretion of the prescribed military authority to decide before which court the proceedings shall be instituted, and, if that authority decides that they shall be instituted before a court-martial, to direct that the accused person shall be detained in military custody.

70. (1) When a criminal court having jurisdiction is of opinion to require delivery of that proceedings ought offender. to be instituted before itself in respect of any alleged offence, it may,

[163.]

[180.]

[98.]

[99.]

[174.]

[175.]

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by written notice, require the prescribed military authority at its option either to deliver over the offender to the nearest magistrate to be proceeded against according to law, or to postpone proceedings pending a reference to the Governor General in Council.

(2) In every such case the said authority shall either deliver over the offender in compliance with the requisition or shall forthwith refer the question as to the court before which the proceedings are to be instituted for the determination of the Governor General in Council, whose order upon such reference shall be final.

71. (1) Notwithstanding anything contained in section 26 of the General Clauses Act, 1897, or in section 403 of the Code of Criminal Procedure, 1898, a person convicted or acquitted by a court-martial may be afterwards tried by a criminal court for the same offence or on the same facts.

(2) If a person sentenced by a court-martial in pursuance of this Act to punishment for an offence is afterwards tried by a criminal court for the same offence or on the same facts, that court shall, in awarding punishment, have regard to the military punishment he may already have undergone.

Powers of courts-martial.

72. A general or summary general court-martial shall have power to try any person subject to this Act for any offence made punishable therein, and to pass any sentence authorized by this Act.

73. A district court-martial shall have power to try any person subject to this Act other than an officer for any offence made punishable therein, and to pass any sentence authorized by this Act other than a sentence of death, or transportation, or imprisonment for a term exceeding two years.

74. A summary court-martial may try any offence punishable under any of the provisions of this Act:

Provided that when there is no grave reason for immediate action, and reference can without detriment to discipline be made to the officer empowered to convene a district court-martial for the trial of the alleged offender, an officer holding a summary court-martial shall not try without such reference any of the following offences, namely:—

(a) any offence punishable under sections 25, 27, clauses (a), (b) or (c), 33, 41 or 42, or

(b) any offence against the officer holding the court.

75. A summary court-martial may try any person subject to this Act and under the command of the officer holding the court, except an officer or warrant officer.

76. (1) A summary court-martial held by the commanding officer of a corps or department may pass any sentence which can be passed under this Act, except a sentence of death or transportation, or of imprisonment for a term exceeding one year.

(2) A summary court-martial held by any other officer may pass any sentence which can be passed under this Act, except a sentence of death or transportation, or of imprisonment for a term exceeding six months.

Procedure at trials by Court-martial.

77. At every general, district or summary general court-martial the senior member shall sit as president.

78. Every general court-martial shall, and every district court-martial may, be attended by a judge advocate, who shall be either an officer belonging to the department of the Judge Advocate General in India, or, if no such officer is available, a person appointed by the convening officer.

79. A British officer of not less than four years' service, herein after called the superintendent officer, shall be appointed to superintend the proceedings of every court-martial composed of Native officers which is not attended by a judge advocate.

80. (1) At all trials by general, district or summary general courts-martial, as soon as the court is assembled, the names of the president and members shall be read over to the accused, who shall thereupon be asked whether he objects to being tried by any officer sitting on the court.

(2) If the accused objects to any such officer, his objection, and also the reply thereto of the officer objected to, shall be heard and recorded, and the remaining officers of the court shall, in the absence of the challenged officer, decide on the objection.

(3) If the objection is allowed by one-half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the

[New.
Oj. A. A.,
s. 162.]

X of 1897.
V of 1898.

[Draft 91.]

[Draft 91.]

[94.]

[A. A. 51 (5).]

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member objected to shall retire, and his vacancy may be filled in the prescribed manner by another officer, subject to the same right of the accused to object.

(4) When no challenge is made, or when challenge has been made and disallowed, or the place of every officer successfully challenged has been filled by another officer to whom no objection is made or allowed, the court shall proceed with the trial.

[118.] **81.** (1) Every decision of a court-martial shall be passed by an *Voting of members.* absolute majority of votes; and where there is an equality of votes, as to either finding or sentence, the decision shall be in favour of the accused.

(2) In matters other than a challenge or the finding or sentence, the president shall have a casting vote.

[109.] **82.** An oath or affirmation in the prescribed *Oaths of president and form* shall be administered to every member of every court-martial and to the judge advocate or superintending officer before the commencement of the trial.

[111.] **83.** Every person giving evidence at a court-martial shall be examined *Oaths of witnesses.* on oath or affirmation, and shall be duly sworn or affirmed in the prescribed form.

[122.] **84.** (1) The convening officer, the president *Summoning witnesses* of the court, the judge and production of documents. advocate, or the commanding officer of the accused person, may, by summons under his hand, require the attendance before the court, at a time and place to be mentioned in the summons, of any person either to give evidence or to produce any document or other thing.

(2) In the case of a witness amenable to military authority, the summons shall be sent to the officer commanding the corps, department or detachment to which he belongs, and such officer shall serve it upon him accordingly.

(3) In the case of any other witness, the summons shall be sent to the magistrate within whose jurisdiction he may be or reside, and such magistrate shall give effect to the summons as if the witness were required in the court of such magistrate.

(4) When a witness is required to produce any particular document or other thing in his possession or power, the summons shall describe it with convenient certainty.

^{1 of 1872.} (5) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, sections 123 and 124, or to apply to any letter, postcard, telegram or other document in the custody of the postal or telegraph authorities.

(6) If any document in such custody is, in the opinion of any district magistrate, chief presidency magistrate, High court or court of

session, wanted for the purpose of any court-martial, such magistrate or court may require the postal or telegraph authorities, as the case may be, to deliver such document to such person as such magistrate or court may direct.

(7) If any such document is, in the opinion of any other magistrate or of any commissioner of police or district superintendent of police, wanted for any such purpose, he may require the postal or telegraph authorities, as the case may be, to cause search to be made for and to detain such document pending the orders of any such district magistrate, chief presidency magistrate or court.

85. (1) Whenever, in the course of a trial by [Draft 11.8] *Court-martial, it appears to the court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonable, such court may address the Judge Advocate General in order that a commission to take the evidence of such witness may be issued.*

(2) The Judge Advocate General may then, if he thinks necessary, issue a commission to any district magistrate or magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

(3) When the witness resides in the territories of any prince or chief in India in which there is an officer representing the British Indian Government, the commission may be issued to such officer.

(4) The magistrate or officer to whom the commission is issued, or, if he is the district magistrate, he or such magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is or shall summon the witness before him and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under the Code of Criminal Procedure, 1898.

V of 1898.

(5) Where the commission is issued to such officer as is mentioned in sub-section (3), he may delegate his powers and duties under the commission to any officer subordinate to him whose powers are not less than those of a magistrate of the first class in British India.

(6) When the witness resides out of India, the commission may be issued to any British consular officer, British magistrate or other British official competent to administer an oath or affirmation in the place where such witness resides.

(7) The prosecutor and the accused person in any case in which a commission is issued may respectively forward any interrogatories in writing which the court may think relevant to the issue, and the magistrate or officer to whom the commission is issued shall examine the witness upon such interrogatories.

*The Indian Army Bill.**(Chapter VIII.—Courts-martial.)*

(8) The prosecutor and the accused person may appear before such magistrate or officer by pleader or, except in the case of an accused person in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

(9) After any commission issued under this section has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Judge Advocate General.

(10) On receipt of a commission and deposition returned under sub-section (9), the Judge Advocate General shall forward the same to the court at whose instance the commission was issued or, if such court has been dissolved, to any other court convened for the trial of the accused person; and the commission, the return thereto and the deposition shall be open to the inspection of the prosecutor and the accused person, and may, subject to all just exceptions, be read in evidence in the case by either the prosecutor or the accused, and shall form part of the proceedings of the court.

(11) In every case in which a commission is issued under this section the trial may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

Explanation.—In this section, the expression “Judge Advocate General” means the Judge Advocate General in India, and includes a Deputy Judge Advocate General.

86. (1) A person charged before a court-martial with desertion offence permissible on charge of another, attempting to desert or of being absent without leave.

(2) A person charged before a court-martial with attempting to desert may be found guilty of desertion or of being absent without leave.

(3) A person charged before a court-martial with any of the following offences specified in section 31, that is to say, theft, dishonest misappropriation or conversion to his own use of property entrusted to him, or dishonestly receiving or retaining property in respect of which any of the aforesaid offences has been committed knowing or having reason to believe it to have been stolen or dishonestly misappropriated or converted, may be found guilty of any other of these offences with which he might have been charged.

89. (4) A person charged before a court-martial with an offence punishable under section 41 or section 42 may be found guilty of any other offence of which he might have been found guilty if the provisions of the Criminal Procedure Code, 1898, were applicable.

(5) A person charged before a court-martial with any other offence under this Act may, on failure of proof of an offence having been committed in circumstances involving a more severe punishment, be found guilty of the same offence as having been committed in circumstances involving a less severe punishment.

87. No sentence of death shall be passed by Majority requisite to any court-martial without the concurrence of two-thirds at the least of the members of the court.

[119.]

Evidence before Courts-martial.

88. The Indian Evidence Act, 1872, shall, General rule as to evidence, subject to the provisions of this Act, apply to all proceedings before a court-martial.

[117A.]
[1872]

89. A court-martial may take judicial notice [New R. of P. 55.] of any matter within the general military knowledge of the members.

90. In any proceeding under this Act, any Presumption as to signature, application, certificate, warrant, reply or other document purporting to be signed by an officer in the civil or military service of the Government shall, on production, be presumed to have been duly signed by the person and in the character by whom and in which it purports to have been signed, until the contrary is shown.

[187.]

91. Any enrolment paper purporting to be signed by an enrolling officer shall, in proceedings under this Act, be evidence of the person enrolled having given the answers to questions which he is therein represented as having given, and of the enrolment of such person.

[115.]

92. (1) If at any trial for desertion, absence without leave, overstaying leave or not rejoining when warned for service, the person tried states in his defence any sufficient or reasonable excuse for his unauthorized absence, and refers in support thereof to any officer in the civil or military service of Government, or if it appears that any such officer is likely to prove or disprove the said statement in the defence, the court shall address such officer and adjourn until his reply is received.

(2) The written reply of any officer so referred to shall, if signed by him, be received in evidence and have the same effect as if made on oath before the court.

(3) If the court is dissolved before the receipt of such reply, or if the court omits to comply with the provisions of this section, the convening officer may, at his discretion, annul the proceedings and order a fresh trial by the same or another court-martial.

93. (1) When any person subject to this Act has been convicted by a court-martial of any offence, such court-

[117.]

may inquire into, and receive and record evidence of, any previous convictions of such person, either by a court-martial or by a criminal court, and may further inquire into and record the general character of such person, and such other matters as may be prescribed.

(2) Evidence received under this section may be either oral, or in the shape of entries in, or certified extracts from, court-martial books or

*The Indian Army Bill.**(Chapter VIII.—Courts-martial. Chapter IX.—Execution of Sentences.)*

other official records; and it shall not be necessary to prove the signature to such certified extracts, nor shall it be necessary to give notice before trial to the person tried that evidence as to his previous convictions or character will be received.

(3) At a summary court-martial the officer holding the trial may, if he thinks fit, record any previous convictions against the offender, his general character, and such other matters as may be prescribed, as of his own knowledge, instead of requiring them to be proved under the foregoing provisions of this section.

Confirmation and Revision of Findings and Sentences.

[89.] **94.** No finding or sentence of a general or Finding and sentence district court-martial invalid without confirmation shall be valid except so far as it may be confirmed as provided by this Act.

95. The findings and sentences of general Power to confirm finding and sentence of district court-martial may be confirmed by the Commander-in-Chief in India, or by any officer empowered in this behalf by warrant of the Commander-in-Chief in India.

96. The findings and sentences of district Power to confirm finding and sentence of district court-martial may be confirmed by any officer having power to convene a general court-martial, or by any officer empowered in this behalf by warrant of any such officer.

97. A warrant issued under section 95 or Contents of warrant section 96 may contain issued under section 95 or such restrictions, reservations or conditions as the officer issuing it may think fit.

[92.] **98.** (1) The finding and sentence of a summary Confirmation of finding general court-martial shall require to be confirmed by the convening officer—

- (a) in the case of the trial of an officer,
- (b) in the case of an acquittal or a sentence of death or transportation or imprisonment for a term exceeding two years, and
- (c) in any other case if so ordered by the said officer.

(2) Save as provided in sub-section (1), a sentence passed by a summary general court-martial shall not require to be confirmed, but may be carried out forthwith.

[89-B.] **99.** Subject to such restrictions as may be Power of confirming officer to mitigate, remit or commute sentences.

when confirming the sentence of a court-martial, mitigate or remit the punishment thereby awarded, or commute that punishment for any less punishment or punishments to which the offender might have been sentenced by the court-martial.

Provided that a sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the court.

100. (1) Any finding or sentence of a court-martial which requires Revision of finding or sentence confirmation may be once revised by order of the confirming officer; and on such revision, the court, if so directed by him, may take additional evidence.

(2) The court, on revision, shall consist of the same officers as were present when the original decision was passed, unless any of those officers are unavoidably absent.

(3) In case of such unavoidable absence the cause thereof shall be duly certified in the proceedings, and the court shall proceed with the revision, provided that, if a general court-martial, it still consists of five officers, or if a district court-martial, of three officers.

101. The finding and sentence of a summary court-martial shall not require to be confirmed, but may be carried out forthwith:

Provided that, if the officer holding the trial is of less than five years' service, he shall not, except on active service, carry into effect any sentence until it has received the approval of an officer commanding not less than a corps.

102. The proceedings of every summary court-martial shall without delay be forwarded to the officer commanding the division or brigade within which the trial was held, or to the prescribed officer; and such officer, or the Commander-in-Chief in India, or the officer commanding the army in which the trial was held, may, for reasons based on the merits of the case, but not on any merely technical grounds, set aside the proceedings or reduce the sentence to any other sentence which the court might have passed.

103. Where a sentence passed by a court-martial which has been confirmed, or which [New C.] A. R. P. [e] does not require confirmation, is found for any reason to be invalid, the authority who would have had power under section 112 to commute the punishment awarded by the sentence if it had been valid may pass a valid sentence:

Provided that the punishment awarded by the sentence so passed shall not be higher in the scale of punishments than, or in excess of, the punishment awarded by the invalid sentence.

CHAPTER IX.**EXECUTION OF SENTENCES.**

104. In awarding a sentence of death a court-martial shall, in Form of sentence of death. its discretion, direct that the offender shall suffer death by being hanged by the neck until he be dead, or shall suffer death by being shot to death.

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(*Chapter IX.—Execution of Sentences. Chapter X.—Pardons and Remissions. Chapter XI.—Rules.*)

[151.] **105.** Whenever any person is sentenced to imprisonment to be under this Act to simple imprisonment, such sentence shall be carried out by confinement in military custody.

106. Whenever any person is sentenced under this Act to transportation or imprisonment, the term of his sentence shall, whether it has been revised or not, be reckoned to commence on the day on which the original proceedings were signed by the president or, in the case of a summary court-martial, by the court.

[150, 151 :
Act V, 1898,
s. 383.] **107.** Whenever any sentence of transportation or rigorous imprisonment is passed under this Act, or whenever any sentence so passed is commuted to transportation or to rigorous imprisonment, the commanding officer of the person under sentence, or such other officer as may be prescribed, shall forward a warrant in the prescribed form to the officer in charge of the civil prison in which such person is to be confined, and shall forward him to such prison with the warrant:

Provided that, in the case of a sentence of rigorous imprisonment for a period not exceeding three months, the confirming officer, or, in the case of a sentence which does not require confirmation, the court, may direct that the sentence shall be carried out by confinement in military custody.

[New.] **108.** Whenever, in the opinion of an officer commanding an army, of imprisonment in division or independent special cases, or portion of a sentence of imprisonment cannot, for special reasons, conveniently be carried out in accordance with the provisions of section 105 or section 107, such officer may direct that such sentence or portion of sentence shall be carried out by confinement in any civil prison or other fit place.

[New.] **109.** Whenever an order is duly made under this Act setting aside or varying any sentence, order or warrant under which any person is confined in a civil prison, a warrant in accordance with such order shall be forwarded by the prescribed officer to the officer in charge of the prison in which such person is confined.

[138.] **110.** In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods, and, when the imprisonment awarded exceeds three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

[New.] **111.** Whenever any person is sentenced under this Act by a court-martial to corporal punishment.

ishment, such punishment shall be inflicted on the bare back with the regulation cat.

CHAPTER X.**PARDONS AND REMISSIONS.**

[160.] **112.** When any person subject to this Act has been convicted by a court-martial of any offence,—

(a) the Governor General in Council, or (b) when the person has been convicted of any offence other than an offence punishable under section 41, the Commander-in-Chief in India or, in the case of a sentence which he could have confirmed or which did not require confirmation, the officer commanding the army, division or independent brigade in which such person, at the time of his conviction, was serving,

may—

(1) pardon the person; (2) mitigate or remit the punishment awarded, or commute such punishment for any less punishment or punishments to which he might have been sentenced by the court-martial; (3) order the restoration to him of any service or other advantage forfeited under his sentence; or (4) re-admit him to the service when he has been dismissed therefrom:

Provided that a sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the court.

CHAPTER XI.**RULES.**

[190.] **113.** (1) The Governor General in Council may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the discharge from the service of persons subject to this Act; (b) the amount and incidence of fines to be imposed under section 21; (c) the assembly and procedure of courts of inquiry, and the administration of oaths or affirmations by such courts; (d) the convening and constituting of courts-martial; (e) the adjournment, dissolution and sittings of courts-martial; (f) the procedure to be observed in trial by court-martial;

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(*Chapter XI.—Rules. Chapter XII.—Property of Deceased Persons, Deserters and Lunatics. Chapter XIII.—Miscellaneous.*)

- (g) the confirmation and revision of the findings and sentences of courts-martial;
- (h) the carrying into effect sentences of courts-martial;
- (i) the forms of orders to be made under the provisions of this Act relating to courts-martial, transportation or imprisonment; and
- (j) any matter in this Act directed to be prescribed.

(3) All rules made under this Act shall be published in the Gazette of India, and, on such publication, shall have effect as if enacted in this Act.

CHAPTER XII.**PROPERTY OF DECEASED PERSONS, DESERTERS AND LUNATICS.**

[176.] **114.** The following rules are enacted respecting the disposal of the property of deceased persons and deserters of every person subject to this Act who dies or deserts:—

(1) The commanding officer shall secure all the moveable property that is on the spot, and cause an inventory thereof to be made, and draw any pay and allowances due to the deceased or deserter.

(2) In the case of a deceased person who has left in a Government savings bank (including any post office savings bank, however named) a deposit not exceeding one thousand rupees, the commanding officer may, if he thinks fit, require the secretary or other proper officer of the bank to pay the deposit to him forthwith notwithstanding anything in any departmental rules; and, after the payment thereof in accordance with such requisition, no person shall have any right in respect of the deposit except as hereinafter provided.

(3) In the case of a deceased person whose representative is on the spot and has given security for the payment of the regimental debts (if any) of the deceased, the commanding officer shall deliver over the property and the amount of the deposit (if any) received under clause (2) to that representative.

(4) In the case of a deceased person whose estate is not dealt with under clause (3), and in the case of any deserter, the commanding officer shall cause the property to be sold by public auction, and shall pay the regimental debts and other debts in camp or quarters (if any), and in the case of a deceased person the expenses of his funeral ceremonies, from the proceeds of the sale and the amount of the deposit (if any) received under clause (2).

(5) The surplus, if any, shall in the case of a deceased person be paid to his representative, (if any), or in the event of no claim to such

surplus being established within twelve months after the death, then the same shall be remitted to the prescribed person.

(6) In the case of the sale of the effects of a deserter, the amount remaining in the hands of the commanding officer shall be forthwith remitted to the prescribed person.

Explanation.—A person shall be deemed to be a deserter within the meaning of desertion. [178.] meaning of this section who has been convicted of desertion, or who has without authority been absent from duty for a period of sixty days and has not subsequently surrendered or been apprehended.

115. Property deliverable and money payable to the representative of a deceased person under section 114. [177.]

Disposal of certain property without production of a deceased person under section 114 may, if the total value or amount thereof does not exceed one thousand rupees, and if the prescribed person thinks fit, be delivered or paid to any person appearing to him to be entitled to receive it or to administer the estate of the deceased, without requiring the production of any probate, letters of administration, certificate or other such conclusive evidence of title; and such delivery or payment shall be a full discharge to those ordering or making the same and to the Secretary of State for India in Council from all further liability in respect of the property or money; but nothing in this section shall affect the rights of any executor or administrator or other representative, or of any creditor, of a deceased person against any person to whom such delivery or payment has been made.

116. The provisions of section 114 shall, so far as they can be made applicable, apply in the case of a person subject to this Act becoming insane. [179.]

CHAPTER XIII.**MISCELLANEOUS.***Military Privileges.*

117. (1) Any person subject to this Act who deems himself wronged by any superior or other officer, may, if not attached to a troop or company, complain to the officer under whose command or orders he is serving; and may, if attached to a troop or company, complain to the officer commanding the same. [180.]

(2) When the officer complained against is the officer to whom any complaint should, under sub-section (1), be preferred, the aggrieved person may complain to such officer's next superior officer.

(3) Every officer receiving any such complaint shall examine into it, and, when necessary, refer it to superior authority.

*The Indian Army Bill.**(Chapter XIII.—Miscellaneous.)*

(4) Every such complaint shall be preferred through such channels as may be from time to time specified by proper authority.

[124.] **118. (1)** No president or member of a court-martial, no judge advocate or superintending officer, no party to any proceeding before a court-martial, or his legal practitioner or agent, and no witness acting in obedience to a summons to attend a court-martial, shall, while proceeding to, attending on or returning from a court-martial, be liable to arrest under civil or revenue process.

(2) If any such person is arrested under any such process, he may be discharged by order of the court-martial.

[125.] **119. (1)** No person subject to this Act shall, so long as he belongs to His Majesty's Indian forces, be liable to be arrested for debt under any process issued by, or by the authority of, any civil or revenue court or revenue-officer.

(2) The judge of any such court may examine into any complaint made by such person or his superior officer of the arrest of such person contrary to the provisions of this section, and may, by warrant under his hand, discharge the person, and award reasonable costs to the complainant, who may recover those costs in like manner as he might have recovered costs awarded to him by a decree against the person obtaining the process.

(3) For the recovery of such costs no fee shall be payable to the court by the complainant.

[126.] **120.** Neither the arms, clothes, equipment, accoutrements or necessities of any person subject to this Act, nor any animal used by him for the discharge of his duty, shall be seized, nor shall the pay and allowances of any such person or any part thereof be attached, by direction of any civil or revenue court or any revenue-officer, in satisfaction of any decree or order enforceable against him.

[127.] **121.** Every person belonging to the Indian Reserve Forces shall, when called out for or engaged upon or returning from training or service, be entitled to all the privileges accorded by sections 119 and 120 to a person subject to this Act.

[128.] **122. (1)** On the presentation to any court by or on behalf of any person subject to this Act of a certificate, from the proper military authority, of leave of absence having been granted to or applied for by him for the purpose of prosecuting or defending any suit or other proceeding in such court, the court shall, on the application of such person, arrange, so far as may be possible, for the hearing and

final disposal of such suit or other proceeding within the period of the leave so granted or applied for.

(2) The certificate from the proper military authority shall state the first and last day of the leave or intended leave, and set forth a description of the case with respect to which the leave was granted or applied for.

(3) No fee shall be payable to the court in respect of the presentation of any such certificate, or in respect of any application by or on behalf of any such person for priority for the hearing of his case.

(4) Where the court is unable to arrange for the hearing and final disposal of the suit or other proceeding within the period of such leave or intended leave as aforesaid, it shall record its reasons for having been unable to do so, and shall cause a copy thereof to be furnished to such person on his application without any payment whatever by him in respect either of the application for such copy or of the copy itself.

(5) If in any case a question arises as to the proper military authority qualified to grant such certificate as aforesaid, such question shall be at once referred by the court to *an officer commanding a corps*, whose decision shall be final.

Deserters and Military Offenders.

123. (1) Whenever any person subject to this Act deserts, the commanding officer of the corps, department or detachment to which he belongs shall give written information of the desertion to such civil authorities as, in his opinion, may be able to afford assistance towards the capture of the deserter; and such authorities shall thereupon take steps for the apprehension of the said deserter in like manner as if he were a person for whose apprehension a warrant had been issued by a magistrate, and shall deliver the deserter, when apprehended, to military custody.

(2) Any police-officer may arrest without warrant any person reasonably believed to be subject to this Act and to be travelling without authority, and shall bring him without delay before the nearest magistrate, to be dealt with according to law.

124. (1) Any person subject to this Act who is charged with an offence may be taken into military custody.

[New C. A. A., s. 45.]

(2) Any such person may be ordered into military custody by any superior officer.

(3) The charge against every person taken into military custody shall, without unnecessary delay, be investigated by the proper military authority, and, as soon as may be, either proceedings shall be taken for punishing the offence, or such person shall be discharged from custody.

The Indian Army Bill.

(Chapter XIII.—Miscellaneous. The Schedule.—Repeal of Enactments.)

[186.] **125.** Whenever any person subject to this Act, who is accused of arrest by civil authorities, is within the jurisdiction of any magistrate or police-officer, such magistrate or officer shall aid in the apprehension and delivery to military custody of such person upon receipt of a written application to that effect signed by his commanding officer.

[162.] **126.** (1) When any person subject to this Act has been absent without due authority from his duty for a period of sixty days, a court of inquiry shall, as soon as practicable, be assembled and, upon oath or affirmation administered in the prescribed manner, shall inquire respecting the absence of the person, and the deficiency, if any, of property of the Government entrusted to his care, or of his arms, ammunition, equipments, instruments, clothing or necessaries; and, if satisfied of the fact of such absence without due authority or other sufficient cause, the court shall declare such absence and the period thereof, and the said deficiency, if any; and the commanding officer of the corps or department to which the person belongs shall enter in the court-martial book of the corps or department a record of the declaration.

(2) If the person declared absent does not afterwards surrender, or is not apprehended, he shall, for the purposes of this Act, be deemed to be a deserter.

(3) If the person declared absent surrenders or is apprehended, the record or a copy thereof, purporting to bear the signature of the officer having the custody of the court-martial book, shall, on the trial of the person for desertion, be presumptive evidence of the facts therein recorded.

Repeal.

127. The enactments mentioned in the Schedule are hereby repealed to the extent specified in the fourth column thereof:

Provided that all warrants issued and persons enrolled or attested under the provisions of any of the said enactments shall be deemed to have been respectively issued, enrolled or attested under this Act.

THE SCHEDULE.

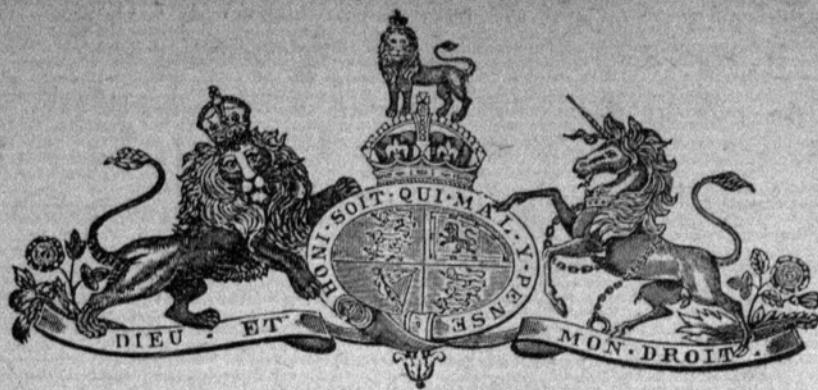
REPEAL OF ENACTMENTS.

(See section 127.)

1	2	3	4
Year.	No.	Short title.	Extent of repeal.
1869	V	The Indian Articles of War.	The whole.
1875	V	The Unattested Sepoys Act, 1875.	Ditto.
1891	XII	The Repealing and Amending Act, 1891.	So much of section 2, subsection (2), and the Second Schedule as relates to the Indian Articles of War.
1894	XII	The Indian Articles of War Amendment Act, 1894.	The whole.
1897	XIV	The Indian Short Titles Act, 1897.	So much of section 2 and the Schedule as relates to Act V of 1875.
1900	I	The Indian Articles of War Amendment Act, 1900.	The whole.
1901	IX	The Indian Articles of War Amendment Act, 1901.	Ditto.
1904	XIII	The Indian Articles of War Amendment Act, 1904.	Ditto.
1905	V	The Indian Articles of War Amendment Act, 1905.	Ditto.

J. M. MACPHERSON,

Secretary to the Government of India.



The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 4, 1911.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced in the Council of the Governor General of India for making Laws and Regulations, Reports of Select Committees presented to the Council, and Bills published under Rule 28.

GOVERNMENT OF INDIA. LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill to consolidate and amend the law regulating labour in Factories was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 31st January 1911:—

We, the undersigned, Members of the Select Committee to which the Bill to consolidate

From Officiating Chief Commissioner, British Baluchistan, No. 1802-Z., dated 17th August 1909; from Chief Commissioner, Coorg, No. 1572, dated 19th August 1909; from High Court, Calcutta, No. 3113, dated 23rd August 1909 [Papers No. 1].

From Messrs. W. H. Harton & Co., Calcutta, dated 25th September 1909 [Paper No. 2].

From Officiating Chief Commissioner, Ajmer-Merwara, No. 34-C., dated 17th October 1909; from Agent, Governor General and Chief Commissioner, North-West Frontier Province, No. 1729-G., dated 15th October 1909 [Papers No. 3].

From Government, Madras, No. 1467, dated 29th October 1909, and enclosures; from Burma, No. 507-M.—4-G.-3, dated 26th October 1909, and enclosures [Papers No. 4].

From Government, United Provinces, No. 1629, dated 30th October 1909, and enclosures [Papers No. 5].

From Chief Commissioner, Central Provinces, No. 1737—VIII.—3-16, dated 1st November 1909, and enclosures [Papers No. 6].

From Government, Eastern Bengal and Assam, No. 8090-M., dated 10th November 1909 [Paper No. 7].

From Government, Bombay, No. 5885, dated 16th November 1909, and enclosures [Papers No. 8].

From Government, Punjab, No. 661 (Commerce and Industry), dated 19th November 1909, and enclosures [Papers No. 9].

From Mr. J. W. Meares, Electrical Adviser to Government of India, No. 399, dated 15th December 1909 [Paper No. 10].

From Government, Bengal, No. 107 (Mis.), dated 7th January 1910, and enclosures [Papers No. 11].

Endorsement by Government of India, Department of Commerce and Industry, No. 2565-3, dated 4th April 1910, and enclosures [Papers No. 12].

From Secretary, Revenue and Statistics Department, India Office, No. R. & S. 1909, dated 13th May 1910, and enclosures [Papers No. 13].

From Government, Bombay, No. 3683, dated 6th August 1910, and enclosure [Papers No. 14].

From Secretary, Upper India Chamber of Commerce, Cawnpore, dated 13th January 1911 [Paper No. 15].

From Cawnpore Woollen Mills Company, Limited, and Egerton Woollen Mills Company, Limited, dated 17th January 1911 [Paper No. 16].

From Upper India Chamber of Commerce, Cawnpore, dated 16th January 1911 [Papers No. 17].

gulating labour in Factories was referred, have

considered the Bill and

the papers noted in the

margin, and have now

the honour to submit

this our Report, with the

Bill as amended by us

annexed thereto.

2. The more important alterations which we have suggested are explained in the following notes on clauses.

Notes on clauses of the amended Bill.

CHAPTER I.

Clause 1, sub-clause (2).—It has been represented to us that some factories will require to have electric installations to enable work therein to be continued till the authorized hour of seven o'clock in the evening on short days; to give time for this, and for the purpose of enabling factory owners to adapt themselves to the altered circumstances, we recommend that the Bill, if passed, should come into force on the 1st day of July 1912.

Sub-clause (3).—We also recommend that British Baluchistan and the Sonthal Parganas should be specially mentioned in this sub-clause, so that the Bill, if passed, may of its own force come into operation in these places.

Clause 2, sub-clause (2).—We have suggested the addition of an explanation to the definition of the word "employed" so as to make it clear that persons employed in cotton or jute-pressing factories are included.

We find that the expression "actually employed" which was defined in sub-clause (3) of clause 2 of the Bill as introduced has given rise to considerable misapprehension and we consider that it should be dispensed with; we have accordingly used the expression "employed" instead of "actually employed" in clauses where it occurs in the Bill, and added a clause (52) to the effect that, in computing the hours of employment in clauses 23 (c), 24 (b), 28 and 32, all intervals of half an hour or more during which work is interrupted are to be excluded.

Sub-clause (3).—We have slightly altered the definition of "factory" so as to make it clear that it includes the compound; we have omitted the proviso, as we are of opinion that its provisions should form a separate clause. (See clause 3).

Sub-clauses (4) and (6).—We have added definitions of "inspector" and "occupier." We have suggested in clause 4 a provision for the appointment of additional inspectors who should be included under the term "inspector"; and it may in some cases be necessary to hold managing agents and other persons occupying a similar position responsible in the same manner as the occupier.

Sub-clause (9).—We have suggested that certain seasonal factories, the conditions of work in which do not in our opinion make it necessary to apply to them the provisions of Chapter V., should also be included in the proviso to the definition of "textile factory."

Clause 3, sub-clause (1).—We think that the Bill if passed should not apply to mines and electrical generating or transforming stations; we have provided for this by clauses (a) and (b). The rest of the sub-clause is, with a slight verbal modification, the proviso to the definition of "factory" in the Bill as introduced. The proviso to the sub-clause is clause 47 of that Bill.

Sub-clause (2).—We are of opinion that the provisions of the Bill relating to hours of employment and holidays should not apply to persons solely employed in the compound and other portions of a factory where no mechanical power or electrical power is used, or where such power is used solely for purposes of bringing or taking goods into or out of the factory.

CHAPTER II.

Clauses 4 to 8 are respectively clauses 3 to 7 of the Bill as introduced.

Clause 4.—Sub-clause (2) which prohibits inspectors from having any interest in factories or patents connected therewith is on the lines of the English Act and is recommended for adoption.

Sub-clauses (4) and (5).—It has been represented to us that in some places it would be impossible for the inspector appointed under sub-section (1) to discharge all the functions of an inspector without the help of local officials other than the District Magistrate; we have accordingly suggested that Government should have the power to appoint additional inspectors and to define their powers. At the same time we are in agreement with the report of the Factory Commission as to the advisability of the discontinuance of inspection by ex-officio inspectors. We think that orders on technical matters should be passed only by the expert inspector and that the power to appoint ex-officio inspectors should be exercised only in very special cases.

Sub-clause (6) reproduces the existing law in providing for the subordination of inspectors.

Clause 5.—The proviso has been moved from clause 43 of the Bill as introduced to this place, to which it seems more properly to belong.

Clauses 6 and 8.—The higher qualification of being a qualified medical practitioner should, we think, be possessed by the certifying surgeon; the person to be authorised by him to exercise some of his functions may on the other hand conveniently be a person, such as a mill doctor, practising medicine or surgery. We have modified these clauses accordingly.

Clause 7.—Sub-clause (2), providing that a certifying surgeon who refuses to certify a person to be fit for employment should record, if so required, his reasons, proceeds on the lines of the English Act and is recommended for adoption.

CHAPTER III.

Clauses 9 to 20 are respectively clauses 8 to 19 of the Bill as introduced.

Clause 12.—Sub-clause (2) is added to bring this clause into line with clauses 11 and 16.

Clause 13.—We think that a proviso such as the one we have suggested would be useful in the case of factories in rural areas.

Clause 17.—We have amplified the wording of this clause so as to make its application more definite.

Clause 18.—We think that power should be given to Local Governments to prescribe other parts of machinery than those mentioned in the clause, which require to be fenced, and that, in the case of dangerous parts of machinery not provided for by the clause or by rules, power should be given to the inspector to give special orders regarding the fencing of such parts; we have also made it clear by the proviso that the requirements regarding the maintenance of the fencing do not apply when the machinery is not in motion or use or when the machinery is being repaired or cleaned. With these objects in view we have re-cast the clause on the lines of section 10 of the English Act.

Clause 19.—We have slightly altered the drafting so as to bring out the meaning more clearly and also to make it plain that the prohibition does not apply when machinery is set in motion by hand during cleaning.

Clause 20.—We think the wording of the clause in the Bill as introduced was somewhat vague; we have adopted as preferable the wording of the corresponding provision in the Bill prepared by the Factory Commission.

Clause 20 of the Bill as introduced has been transferred to Chapter IX and is now included in clause 50.

CHAPTER IV.

Clauses 21 and 22.—We have in re-drafting clauses 21 and 22, as also clauses 28, 29 and 30, given effect to the generally expressed opinion that standard exemptions from the provisions of the Act dealing with hours of employment and holidays should be embodied in the Act. These exemptions have been included in schedules arranged under headings indicating the principles on which the exemptions have been granted. We have given power to Local Governments to make further exemptions, but we have laid it down that in doing so they should follow the principles on which the standard exemptions are based.

Clause 22.—It has been found that the provisions of this clause as originally drafted would lead to certain practical difficulties. We have therefore adopted the lines of the Factory Commission's draft which generally follows the existing law. This has led to the abandonment of the definition of "week" in clause 2 (9) of the Bill as introduced.

Clause 23 of the Bill as introduced is rendered unnecessary and is omitted.

Clauses 23 to 26 are respectively clauses 24 to 27 of the Bill as introduced.

Clause 23.—In *sub-clause (a)* we have added a provision requiring children employed in a factory to carry the certificates of age belonging to them or tokens referring to such certificates, as the majority of the Committee think it most important that there should be a ready means of identifying these children.

Sub-clause (d) has been omitted as we think that its provisions are, in view of a closer system of inspection, unnecessary, as well as impracticable.

Clause 25.—We have omitted the words "to the knowledge of the manager" as in our opinion their retention would render the provision practically inoperative.

Clause 27.—We suggest the addition of this clause in accordance with the views expressed in paragraph 80 of the Factory Commission's report to meet the special circumstances of cotton ginning factories, and we have included also cotton pressing factories.

CHAPTER V.

Clauses 28 and 31.—The majority of the Committee recommend the retention in the Bill of the clauses which secure direct limitation of the working hours of adult males in textile factories to twelve. This is one of the main principles of the Bill and we consider that it should be clearly set forth in express terms so as to show plainly the intention of the law. A minority of the Committee are opposed to direct limitation and have recorded a minute of dissent to this effect.

Clause 30.—Following the lines adopted in Chapter IV we have specified in this clause the general exemptions which are considered necessary to the twelve hours provision, and also to the provision which limits working in a textile factory to the hours between half past five o'clock in the morning and seven o'clock in the evening, and the Local Governments have been given power to make further exemptions when necessary.

Clause 31.—*Sub-clause (1)* is, with a slight addition, clause 30 of the Bill as introduced.

Sub-clause (3) has been drafted so as to show that the general provision as to the machinery being run for twelve hours applies only to the main manufacturing process, and not to the subsidiary processes which are covered by the exemptions specified in clause 30.

Clause 31 of the Bill as introduced is replaced by clause 29 (2) and clause 31 (2); presses for ginning cotton or pressing cotton or jute have been excluded by clause 2 (9) from the definition of textile factory" and are therefore omitted from these provisions.

Clause 33 of the Bill should in the opinion of the majority of the Committee be omitted.

CHAPTER VI.

Clauses 33 to 36 are respectively clauses 34 to 37 of the Bill as introduced.

Clause 33.—We think that in the case of seasonal factories the notice should be given each season when they start work.

We are further of opinion that a manager should be nominated for every factory, and that, where there is no manager, the occupier himself should be deemed to be the manager.

Clause 35.—We are of opinion that the provision regarding the keeping of a register of young persons below the age of sixteen is unnecessary.

Clause 36.—We think it would be useful to require an abstract of the Act and of the rules made thereunder to be posted up in every factory.

We think that the notice required to be posted up need only contain the standing orders of the factory kept up to date upon the matters specified, and that it will suffice if a copy of the original notice and intimation of all subsequent changes made therein from time to time are sent to the inspector within 7 days. We have further considered it unnecessary to require such notices and intimation in the case of seasonal factories.

We think it important that the actual hours worked between the limits allowed by law should be shown in the notice.

Sub-clause (1) (e) of clause 37 of the Bill as introduced is covered by clause 22 (1) and is therefore omitted.

CHAPTER VII.

Clauses 37 to 40 are respectively clauses 38 to 41 of the Bill as introduced.

Clause 37, sub-clause 2 (d).—We have provided for the issue of duplicate certificates in cases where the originals are lost.

Sub-clause 2 (e).—We have made an addition to this so as to make it conform to the existing law.

Sub-clause 2 (j), (m), (o).—These are consequential on changes which we have recommended elsewhere in the body of the Bill.

CHAPTER VIII.

Clause 41.—There is a strong body of opinion in favour of making the occupier of a factory jointly and severally liable with the manager for contraventions of the Act. We agree in this and recommend that the clause be amended as suggested by us.

The provisos (i) and (iii) to clause 42 of the Bill as introduced have been placed as separate clauses, namely, clauses 48 (1) and 45.

Clause 42.—This clause is new; it proceeds on the lines of section 141 of the English Factory and Workshop Act, 1901, and we recommend its adoption.

Sub-clause (1) enables the occupier or manager who is charged with an offence under the Act to make a complaint before the Court charging the person whom he alleges to be the actual offender, and to obtain exemption from liability if it is established that he has acted diligently to enforce the execution of the Act and that the other person committed the offence without his knowledge, consent or connivance.

Sub-clause (2) requires the inspector to proceed against the actual offender without first proceeding against the occupier or manager in cases when the inspector is satisfied as to who the actual offender is, and that the occupier or manager has acted diligently in executing the Act and that the offence was committed without his knowledge, consent or connivance and in contravention of his orders.

Clause 43.—The amendment suggested by us in sub-clause (2) is consequential on the amendment we have suggested in clause 17.

The proviso to clause 43 in the Bill as introduced has been transferred to clause 5, as already noted.

Clause 45.—This clause appears in the Bill as introduced as proviso (iii) to clause 42.

Clause 46.—We are of opinion that it will suffice if the presumption mentioned in this clause applies only to children who may be found in those parts of a factory where children are employed.

Clause 48.—Sub-clause (1) of this clause is proviso (i) to clause 42 of the Bill, as introduced.

Sub-clause (2).—We think it should be laid down that offences, with one exception, under the proposed Act should be triable only by a first class Magistrate. We consider that this is of importance in view of the special procedure which we have recommended for adoption in clause 42(1).

Clause 49.—This clause is new. It is on the lines of section 24 of the Indian Mines Act, 1901, and we recommend its adoption.

CHAPTER IX.

Clause 50, sub-clause (1).—We recommend that the time for preferring appeals against the orders of an inspector should be extended to fourteen days.

Sub-clause (2).—The majority of the Committee think that the refusal of an inspector to approve a system of shifts should also be subject to appeal.

Sub-clause (3).—It has been suggested that Local Governments should have power to provide for the appointment of experts to assist in the hearing of these appeals. We consider that provision for this might reasonably be made in the Bill; we have accordingly added this sub-clause.

Clause 51.—*Sub-clause (1)* is new. We think it important to provide distinctly that the hours of work required to be set out in the notice under clause 36 should be reckoned in the standard of time ordinarily observed in any area.

Sub-clause (2).—We think that the wording of clause 48 of the Bill as introduced, regarding computation of time, is not sufficiently clear; this sub-clause is a redraft which we recommend for adoption. It has further been represented to us that there should be some power to alter the hours of starting and closing work in the case of places where, during winter, work cannot very well start before 6-30 or 7 A.M. Our redraft provides for this case also.

Clause 52.—We have already explained the object of this clause in connection with the omission of the definition of "actually employed."

Clause 53.—This clause which empowers the Local Government to declare parts of a factory to be separate factories has been adapted from section 151 of the English Act. We think that the power which it confers on Local Governments will be found useful.

Clause 57.—This clause is in accordance with precedent. We think that inspectors and other persons acting in good faith in the execution of the proposed Act should be protected from legal proceedings.

3. The publication ordered by the Council has been made as follows:—

<i>In English.</i>		
<i>Gazette.</i>		<i>Date.</i>
Gazette of India		31st July 1909.
Fort Saint George Gazette		10th August 1909.
Bombay Government Gazette		5th August 1909.
Calcutta Gazette		11th August 1909.
United Provinces Gazette		7th August 1909.
Punjab Government Gazette		13th August 1909.
Burma Gazette		21st August 1909.
Central Provinces Gazette		7th August 1909.
Eastern Bengal and Assam Gazette		11th August 1909.
Coorg District Gazette		1st September 1909.

<i>In the Vernaculars.</i>		
<i>Province.</i>	<i>Language.</i>	<i>Date.</i>
Madras	Tamil	14th September 1909.
	Telugu	
	Hindustani	
	Kanarese	
	Malayalam	
Bombay	Uriya	21st December 1909.
	Marathi	
	Gujarathi	
Bengal	Kanarese	
	Bengali	2nd November 1909.
	Hindi	5th October 1909.
	Uriya	16th October 1909.
United Provinces	Urdu	9th October 1909.
	Urdu	1st October 1909.
	Burmese	18th September 1909.
	Bengali	13th November 1909.
Coorg	Kanarese	1st October 1909.

4. We think that the Bill has not been so altered as to require re-publication, and we recommend that it be passed as now amended.

B. ROBERTSON.
SYED ALI IMAM.
C. W. N. GRAHAM.*
M. B. DADABHOY.*
G. K. GOKHALE.*
VITHALDAS D. THACKERSEY.*
J. ANDREW.
H. O. QUIN.
F. C. GATES.
F. A. T. PHILLIPS.
SASSOON DAVID.*
J. M. MACPHERSON.
S. H. FREMANTLE.
R. N. MUDHOLKAR.*
ARCHY BIRKMYRE.*

The 30th January 1911.

* Signed subject to Minutes of Dissent appended hereto.

We regret we are unable to accept the clauses in the Bill relating to the restriction of the hours of work of adult male labourers. The principle of such restriction is quite a novel one and has not been recognised in any part of the British Empire. The Factory Commission of 1908 has emphatically deprecated such restriction. It has shown that there is no necessity for the adoption of such a drastic course which, in its belief, would cause the gravest inconvenience to existing industries and would seriously hamper the growth of industrial enterprise.

C. W. N. GRAHAM.

ARCHY BIRKMYRE.

SASSOON DAVID.

VITHALDAS D. THACKERSEY.

M. B. DADABHOY.

R. N. MUDHOLKAR.

We are further of opinion that the textile factories which prefer to work by daylight hours only should be exempted from the restriction as regards the working hours of adult males.

"The Local Government may, subject to the control of the Governor General in Council, exempt any textile factory which undertakes to work by daylight hours only and not to use artificial light, from the provisions of sections 28 and 31:

Provided that the longest working day in any such factory shall not exceed twelve and a half hours and that the average working in any such factory during the whole year shall not exceed twelve hours a day."

recommend that the clause as per margin be added to Chapter V of the Bill.

SASSOON DAVID.

M. B. DADABHOY.

VITHALDAS D. THACKERSEY.

R. N. MUDHOLKAR.

On the question of *principle* I have no objection to the restriction of adult labour by legislation, where necessary. I even hold that, in certain circumstances, it becomes the duty of the State to step in and prevent workers from being over-worked. The actual restrictions, too, proposed in the chapter on textile factories, are in themselves not unreasonable, and this has been freely admitted by the representatives of capital on the Committee. On these points, therefore, I am at one with the Government. Where, however, my difference with a majority of the Committee comes in is in regard to the *method* of achieving the object of the Bill. I feel there is great force in what the Factory Commission has said, namely, that if this object can be attained by indirect means, that course should be adopted in preference to a direct limitation of the working hours of adult males. The method recommended by the Commission was to create a specially-protected class of "young persons." I think the Government should have tried this method before resorting to a more drastic remedy. A proposal brought forward by the Hon'ble Sir Vithaldas D. Thakersey—namely, that there should be a compulsory stoppage of three hours of all work after twelve hours' work—could also have effected this object in practice without direct interference, and I regret it was not accepted by the Government.

The proposal that Local Governments should be empowered, subject to the control of the Government of India, to permit any factory which prefers to work by daylight only and undertakes not to use artificial light, to work by daylight hours, provided that the average duration of working throughout the year does not exceed 12 hours a day and that on any day $12\frac{1}{2}$ hours, is so reasonable that it is a matter of great regret that the Committee should not have accepted it. The Bombay Government have strongly urged this, and as the largest factory population is in that Presidency, their views in this matter are entitled to great weight. The objection against the proposal is that on those days on which work for more than $12\frac{1}{2}$ hours is possible by daylight, the permission granted is, in the absence of effective inspection, liable to be abused. But the same thing may be urged with far greater force in the case of factories working with electric light—with this additional difference that while in the case of daylight factories the need for effective inspection, so far as the duration of work is concerned, would be confined to about three months in the year, in the other case the need would exist all the year round.

Finally, I regret that the Bill does not throw responsibility on factory-owners to provide for the education of children, say, between the ages of 9 and 12, employed in the factories. The Factory Commission of 1890 had strongly urged this, and every

consideration of justice and humanity demands it. It is only fair that Municipalities and the Government should come to the assistance of factory-owners in meeting the cost of the schools that will be required. But to turn these children out into the street—there to loaf about or get into ways of mischief—after six to seven hours' physical work has been extracted from them is most indefensible and ought not to be permitted.

G. K. GOKHALE.

The 31st January 1911.

THE INDIAN FACTORIES BILL,
[As amended by the Select Committee.]

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SCHEDULES.

*The Indian Factories Bill.**(Chapter I.—Preliminary.)***[As amended by the Select Committee.]****(The alterations made by the Select Committee are printed in italics.)***A Bill to consolidate and amend the law regulating labour in factories.*

WHEREAS it is expedient to consolidate and amend the law regulating labour in factories ; It is hereby enacted as follows :—

CHAPTER I.**PRELIMINARY.**

1. (1) This Act may be called the Indian Factories Act, 1911.

Short title, commencement and extent. **(2)** It shall come into force on the first day of July 1912 ; and

(3) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) “Child” means a person who is under the age of fourteen years : “Child.”

(2) a person who works in a factory, whether “Employed.” for wages or not,—

(a) in a manufacturing process or handicraft, or

(b) in cleaning any part of the factory used for any manufacturing process or handicraft, or

(c) in cleaning or oiling any part of the machinery, or

(d) in any other kind of work whatsoever, incidental to, or connected with, the manufacturing process or handicraft, or connected with the article made or otherwise the subject of the manufacturing process or handicraft therein,

shall be deemed to be employed therein :

Explanation.—The term manufacturing process shall be deemed to include the baling of any material for transport :

(3) “Factory” means any premises wherein, or

“Factory.” within the precincts of which, steam, water or other mechanical power or electrical power is used in aid of any process for, or incidental to, making, altering, repairing, ornamenting, finishing or otherwise adapting for use, for transport or for sale any article or part of an article :

(4) “Inspector” includes an additional inspector :

(5) “mill-gearing” includes every shaft, whether upright, oblique or horizontal, and every wheel, drum, pulley, rope, chain, wire, driving strap or band by which the motion of the first moving power is communicated to any machine appertaining to any manufacturing process :

(6) “Occupier” includes a managing agent or other person authorised to represent the occupier :

(7) “Prescribed” means prescribed by this Act or by rules made thereunder :

(8) “system of shifts” means a system of relays in which the time of “System of shifts.” the beginning and ending of the period or periods of the employment of each person is fixed for each relay :

(9) “textile-factory” means a factory where “Textile factory.” in is carried on any process for, or incidental to, making, altering, repairing, ornamenting, finishing or otherwise adapting for use, for transport or for sale cotton, wool, hair, silk, flax, hemp, jute, tow, china-grass, cocoa-nut fibre or other like material, either separately or mixed together or mixed with any other material, or any fabric made thereof :

Provided that the term “textile factory” shall not be deemed to include the following factories, namely:—cloth-printing works, bleaching and dyeing works, lace warehouses, paper mills, flax scutch mills, silk filatures, factories for ginning cotton, decorticating fibre, pressing cotton, jute or other fibre, rope works and hat works.

3. (1) Nothing in the Application of Act. following chapters shall apply to

(a) any mine subject to the operation of the Indian Mines Act, 1901, or

(b) any electrical generating or transforming station, or

(c) any indigo factory, or

(d) any factory situated on and used solely for the purposes of a tea and coffee plantation, or

(e) any factory wherein on no day in the year are more than forty-nine persons simultaneously employed.

Provided that the Local Government may, subject to the control of the Governor-General in Council, by notification in the local official gazette, apply to any factory or class of factories, wherein any specified number of persons, not being less than twenty, are on any day simultaneously employed, all or any of the provisions of this Act which would, save for clause (e) of this subsection, have applied.

(2) The provisions of Chapters IV and V and sections 35 and 36 shall not, unless the Local Government by order in writing otherwise directs, apply to any person employed solely in any place within the precincts of a factory, not being a cotton reeling-room or winding-room, in which place no

*The Indian Factories Bill.**(Chapter II.—Inspectors and Certifying Surgeons. Chapter III.—Health and Safety.)*

steam, water or other mechanical power or electrical power is used in aid of the manufacturing process carried on in such factory, or in which such power is used solely for the purpose of moving or working any appliances in connection with the bringing or taking of any goods into or out of the factory.

CHAPTER II.

INSPECTORS AND CERTIFYING SURGEONS.

4. (1) The Local Government may, by notification in the local official Gazette, appoint such

persons as it thinks fit to be inspectors of factories within such local limits as it may assign to them respectively.

(2) No person shall be appointed to be an inspector under sub-section (1), or, having been so appointed, shall continue to hold the office of inspector, who is or becomes directly or indirectly interested in a factory or in any process or business carried on therein or in any patent or machinery connected therewith.

(3) The District Magistrate shall be an inspector under this Act.

(4) The Local Government may also by notification as aforesaid, and subject to the control of the Governor-General in Council, appoint such public officers as it thinks fit to be additional inspectors for all or any of the purposes of this Act within such local limits as it may assign to them respectively.

(5) In any area where there are more inspectors than one, the Local Government may, by notification as aforesaid, declare the powers which such inspectors shall respectively exercise, and the inspector to whom the prescribed notices are to be sent.

(6) Every inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code and shall be officially subordinate to such authority as the Local Government may indicate in this behalf.

5. Subject to any rules in this behalf, an inspector may, within the local limits for which he is appointed,—

(a) enter with such assistants (if any) as he thinks fit, any place which is, or which he has reason to believe to be, used as a factory;

(b) make such examination of the premises and machinery and of any prescribed registers, and take on the spot or otherwise such evidence of any persons as he may deem necessary for carrying out the purposes of this Act; and

(c) exercise such other powers as may be necessary for carrying out the purposes of this Act.

Provided that no one shall be required under this section to answer any question or give any evidence tending to criminate himself.

6. The Local Government may appoint such Certifying surgeons. qualified medical practitioners as it thinks fit

to be certifying surgeons for the purposes of this Act within such local limits as it may assign to them respectively.

7. (1) A certifying surgeon shall, at the request of any person desirous of being employed in a factory situated within the local limits for which he is appointed, or of the parent or guardian of such person, or of the manager of the factory in which such person desires to be employed, examine such person and grant him a certificate in the prescribed form, stating his age, as nearly as it can be ascertained from such examination, and whether he is fit for employment in a factory.

(2) Where a certifying surgeon refuses to certify that a person is fit for employment in a factory, he shall, if required by such person, or his parent or guardian, or the manager of the factory in which such person desires to be employed, state in writing his reasons for such refusal.

8. A certifying surgeon may authorize any Delegation of certifying surgeon's functions assigned to him by section 7, and may revoke such authority:

Provided that no certificate granted under this section shall, unless confirmed, on personal examination of the person named therein, by the certifying surgeon who conferred the authority, be valid after the first date subsequent to the grant thereof on which such certifying surgeon visits the factory in which the person named therein is employed.

CHAPTER III.

HEALTH AND SAFETY.

9. The following provisions shall apply to every factory:—

(a) it shall be kept clean, and free from effluvia arising from any drain, privy or other nuisance;

(b) it shall not be so overcrowded while work is carried on therein as to be dangerous or injurious to the health of the persons employed therein;

(c) it shall be ventilated in such a manner as to render harmless, as far as practicable, any gases, vapours, dust or other impurities generated in the course of the work carried on therein that may be injurious to health.

10. If in a factory, in which any process is carried on by which dust or other impurity is generated and inhaled by the workers to an injurious extent, it appears to the inspector that such inhalation could be to a great extent prevented by the use of a fan or other mechanical means, the inspector may serve on the manager of the factory an order

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in writing, directing that a fan or other mechanical means of a proper construction for preventing such inhalation be provided, maintained and used before a specified date.

11. (1) Every factory shall be sufficiently lighted.

(2) In the case of any factory which is not in the opinion of the inspector so lighted, the inspector may serve on the manager of the factory an order in writing, specifying the measures which he considers necessary for the attainment of a sufficient standard of lighting, and requiring him to carry them out before a specified date.

12. (1) In any factory in which humidity of the atmosphere is produced by artificial means, the water used for humidifying, used for the purpose of producing humidity shall be taken either from a public supply of drinking water or from some other source of water ordinarily used for drinking, or shall be effectively purified before being used for the purpose of producing humidity.

(2) In the case of any factory in which any water required under sub-section (1) to be effectively purified is not in the opinion of the inspector so purified, the inspector may serve on the manager of the factory an order in writing, specifying the measures which he considers necessary for effectively purifying the water and requiring him to carry them out before a specified date.

13. Every factory shall be provided with sufficient and suitable latrine and urinal accommodation, and, if the Local Government so requires, with separate urinal accommodation for the persons employed in the factory.

Provided that the inspector may, subject to such conditions as the Local Government may lay down in this behalf, by an order in writing exempt any factory from the provisions of this section.

14. In every factory there shall be maintained a sufficient and suitable Water-supply. supply of water fit for drinking for the use of the persons employed in the factory.

15. In every factory, the construction of which is commenced after the doors of factory to open outwards. commencement of this Act, the doors of each room in which more than thirty persons are employed shall, except in the case of sliding doors, be constructed so as to open outwards.

16. (1) Every factory shall be provided with such means of escape in case of fire for the persons of escape in case of fire. employed therein as can reasonably be required in the circumstances of each case.

(2) In the case of any factory which is not in the opinion of the inspector so provided, the inspector may serve on the manager of the factory an order in writing, specifying the measures which he considers necessary for providing such means of escape, and requiring him to carry them out before a specified date.

17. No person shall smoke, or use a naked light, Precautions against fire. or cause or permit any such light to be used, in the immediate vicinity of any inflammable material in any factory.

18. (1) (a) Every fly-wheel directly connected with a steam-engine, water-wheel or other mechanical power or electrical power in any part of the factory, and every part of any water-wheel or engine worked by any such power,

(b) every hoist or teagle and every hoist-well, trap-door or other similar opening near which any person is liable to pass or be employed, and

(c) every part of the machinery which the Local Government may by rule require to be kept fenced, shall be securely fenced.

(2) If in any factory there is any other part of the machinery or mill-gearing which may in the opinion of the inspector be dangerous if left unfenced, the inspector may serve on the manager of the factory an order in writing, specifying the measures which he considers necessary for fencing such part in order to remove the danger, and requiring him to carry them out before a specified date.

(3) All fencing must be constantly maintained in an efficient state while the parts required to be fenced are in motion or use, except where they are under repair or are under examination in connection with repair or are necessarily exposed for the purpose of cleaning or lubricating or for altering the gearing or arrangements of the parts of the machine.

19. No woman or child shall be allowed to clean any part of the mill Prohibition of employment of women and children in certain dangerous work. gearing or machinery of a factory while the same is in motion by the action of steam, water or other mechanical power or electrical power, as the case may be, or to work between the fixed and traversing parts of any self-acting machine while such machine is in motion by the action of any power above described.

20. No woman or child shall be employed in the part of a factory for Prohibition of employment of women and children where cotton-openers are at work. pressing cotton in which a cotton-opener is at work:

Provided that, if the feed-end of a cotton-opener is in a room separated from the delivery-end by a partition extending from the floor to the roof, women and children may be employed in the room in which the feed-end is situated.

CHAPTER IV.**HOURS OF EMPLOYMENT AND HOLIDAYS.**

21. (1) In every factory there shall be fixed for Periodical stoppage each working day, at intervals not exceeding six hours, periods of not less than half an hour, during which all work shall be discontinued.

(2) Nothing in sub-section (1) shall apply to—

- (a) any work performed by any person while employed in accordance with a system of shifts approved by the inspector; or
- (b) the work of calendering, finishing, sewing or tailoring in textile factories, or in cloth-printing works, or in bleaching or dyeing works; or

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- (c) work on urgent repairs executed in railway or tramway workshops or running sheds, or in engineering works or ship-repairing works ; or
- (d) any work mentioned in Part A or in Part B of Schedule I, or
- (e) to the factories mentioned in Part C of the said Schedule.

(3) Where it is proved to the satisfaction of the Local Government,

- (a) that any class of work not specified in Part A of Schedule I is of an urgent nature or is such as in the interests of efficiency is commonly performed while the main manufacturing process of the factory is discontinued, or
- (b) that there is in any class of factories not specified in Part B of the said schedule any work which necessitates continuous production for technical reasons, or
- (c) that any class of factories not specified in Part C of the said schedule requires, by reason of the exigencies or special circumstances of the trade carried on therein, an uninterrupted working day,

the Local Government may, subject to the control of the Governor General in Council, by notification in the local official gazette, exempt,

- in case (a), such class of work,
- in case (b), work of the nature described in such class of factories,
- in case (c), such class of factories,

from the provisions of sub-section (1) on such conditions, if any, as it may impose.

22. (1) No person shall be employed in any factory on a Sunday, Weekly holiday. unless

- (a) he has had, or will have, a holiday for a whole day on one of the three days immediately preceding or succeeding the Sunday, and
- (b) the manager of the factory has previous to the Sunday or the substituted day, whichever is earlier, given notice to the inspector of his intention so to employ the said person and of the day which is to be substituted, and has at the same time affixed a notice to the same effect in the place mentioned in section 36.

(2) Nothing in sub-section (1) shall apply to work on urgent repairs executed in railway or tramway workshops or running sheds or in engineering works or ship-repairing works.

(3) Nothing in sub-section (1) shall apply to any person employed on any work specified in Part A of Schedule I or in Part A of Schedule II, or to any factory specified in Part B of Schedule II.

(4) Where it is proved to the satisfaction of the Local Government —

- (a) that any class of work not specified in Part A of Schedule I is of an urgent nature or is such as in the interests of efficiency is commonly performed while the main manufacturing process of the factory is discontinued ; or
- (b) that there is in any class of factories not specified in Part A of Schedule II any work which necessitates continuous production for technical reasons ; or

- (c) that any class of factories not specified in Part B of Schedule II supplies the public with articles of prime necessity which must be made or supplied every day ; or
- (d) that in any class of factories the work performed, by the exigencies of the trade or by its nature, cannot be carried on except at stated seasons or at times dependent on the irregular action of natural forces,

the Local Government may, subject to the control of the Governor General in Council, by notification in the local official gazette, exempt,

- in case (a), such class of work,
- in case (b), work of the nature described in such class of factories, and
- in cases (c) and (d), such class of factories, from the provisions of sub-section (1), on such conditions, if any, as it may impose:

23. With respect to the employment of children in factories the following provisions shall apply :—

- (a) no child shall be employed in any factory unless he is in possession of a certificate granted under section 7 or section 8 showing that he is not less than nine years of age and is fit for employment in a factory, and while at work carries either the certificate itself or a token giving reference to such certificate ;
- (b) no child shall be employed in any factory before half-past five o'clock in the morning or after seven o'clock in the evening ;
- (c) no child shall be employed in any factory for more than seven hours in any one day.

24. With respect to the employment of women in factories the following provisions shall apply :—

- (a) no woman shall be employed in any factory before half-past five o'clock in the morning or after seven o'clock in the evening ;
- (b) no woman shall be employed in any factory for more than eleven hours in any one day.

25. No person shall employ, or permit to be employed, in any factory any woman or child whom he knows, or has reason to believe, to have already been employed on the same day in any other factory.

26. The manager of a factory shall fix specified hours for the employment of women and children to be fixed. child employed in such factory, and no woman or child shall be employed except during such hours.

27. Nothing in section 24 or section 26 shall apply to any woman in any factory for ginning or pressing cotton, in which such number of women are employed as are in the opinion of the inspector sufficient to make the

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hours of employment of each woman not more than eleven in any one day.

CHAPTER V.**SPECIAL PROVISIONS FOR TEXTILE FACTORIES.**

28. No person shall be employed in any textile factory for more than twelve hours in any one day.

Limitation of hours *Limits between which a person may be employed.* (1) No person shall be employed in any textile factory before half-past five o'clock in the morning or after seven o'clock in the evening.

(2) Nothing in sub-section (1) shall apply to any person while employed in accordance with a system of shifts approved by the inspector.

30. (1) Nothing in section 28 or section 29 shall apply to

Exceptions from sections 28 and 29.

- (a) the work of calendering, finishing, sewing or tailoring, or
- (b) the work of cloth-printing, bleaching or dyeing, or
- (c) any work specified in Part A of Schedule I.

(2) Where it is proved to the satisfaction of the Local Government that any work not specified in Part A of Schedule I is of an urgent nature, or is such as in the interests of efficiency is commonly performed while the main manufacturing process of the factory is discontinued, the Local Government may, subject to the control of the Governor General in Council, by notification in the local official gazette, exempt any person employed on such work from the operation of section 28 or section 29 on such conditions, if any, as it may impose.

31. (1) The period for which mechanical power or electrical power is used in any textile factory shall not in any one day exceed twelve hours.

(2) Nothing in sub-section (1) shall apply to any mechanical power or electrical power while being solely used in aid of the work performed by any person employed in accordance with a system of shifts approved by the inspector.

(3) Nothing in sub-section (1) shall apply to any mechanical power or electrical power required in connection with any work specified in sub-section (1) of section 30 or in connection with any work which is exempted by the Local Government under sub-section (2) of the same section.

32. No child shall be employed in any textile factory for more than six hours in any one day.

CHAPTER VI.**NOTICES AND REGISTERS.**

Person beginning to occupy factory to give notice.

33. (1) Every person occupying a factory shall, in the case of existing factories, within one month after the commencement of this Act, or

(b) in the case of a factory which starts work after the commencement of this Act, within one month after he begins to occupy the factory,

send to the inspector a written notice containing

- (i) the name of the factory and of the place where it is situate,
- (ii) the address to which he desires his letters to be directed,
- (iii) the nature of the work performed in such factory,
- (iv) the nature and amount of the moving power therein, and
- (v) the name of the person who shall be deemed to be the manager of the factory for the purposes of this Act.

Provided that in the case of a seasonal factory such notice shall be sent on or before the date of starting work for each season.

(2) If the manager of the factory is changed, the occupier shall send to the inspector, within seven days from the date on which the change is made, written notice of the change.

(3) During any period for which no person has been designated as manager of a factory under this section, the occupier shall himself be deemed to be the manager of the factory for the purposes of this Act.

34. When any accident occurs in a factory causing death or bodily injury, whereby the person injured is prevented from returning to his work in the factory during the forty-eight hours next after the occurrence of the accident, the manager shall send notice of the accident to such authorities in such form and within such time as may be prescribed.

35. In every factory there shall be kept, in the prescribed form, a Register of children. Register of the children (if any) employed in such factory, and of the nature of their respective employment.

36. (1) There shall be affixed in some spurious place near the main entrance of every factory, in English and in the language of the majority of the operatives in such factory, the prescribed abstracts of this Act and of the rules made thereunder, and also a notice containing the standing orders of the factory upon the following matters, namely,—

- (a) the time of beginning and ending work on each day;
- (b) the periods during which all work is discontinued under section 21;
- (c) the hours of beginning and ending work for each shift (if any); and
- (d) the hours of employment of women and children respectively, if not employed in shifts.

(2) A copy of the said notice shall be sent to the inspector within one month of the commencement of this Act, or, in the case of a factory which starts work after the commencement of this Act, within one month of commencing work.

(3) The said notice shall be correctly maintained and kept up to date, and intimation of any change therein shall be sent by the manager to the inspector within seven days.

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(4) *Nothing in this section, except in so far as it relates to affixing the prescribed abstracts of this Act and the rules made thereunder, shall apply to any seasonal factory.*

CHAPTER VII.**RULES.**

37. (1) Subject to the control of the Governor General in Council, the Power to make rules. Local Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the inspection of factories;
- (b) the manner in which inspectors are to exercise the powers conferred on them by this Act;
- (c) the duties to be performed by certifying surgeons;
- (d) the form of the certificate prescribed by section 7, *the grant of a duplicate in the event of loss of the original certificate and the fee, if any, to be charged for such duplicate;*
- (e) the methods, *including lime washing, painting, varnishing and washing*, to be adopted in order to secure cleanliness and freedom from effluvia;
- (f) the proportion which the number of cubic feet of space in any room shall bear to the number of persons employed at one time therein;
- (g) standards of ventilation, and the methods to be adopted in order to secure their observance;
- (h) standards of latrine and urinal accommodation;
- (i) standards of water-supply;
- (j) *the parts of the machinery to be kept fenced in accordance with section 18, sub-section (1), clause (c);*
- (k) the form of the notice prescribed by section 34, and the time within which and the authorities to whom it shall be sent;
- (l) the form of the register prescribed by section 35;
- (m) *the abstracts of the Act and of the rules required by section 36;*
- (n) *the procedure to be followed in presenting and hearing appeals under this Act, including the appointment and remuneration of assessors; and*
- (o) *the manner of service of notices and orders upon occupiers or managers of factories.*

38. The Governor General in Council may from time to time make Returns. rules requiring occupiers or managers of factories to furnish such returns, occasional or periodical, as may in his opinion be necessary for the effectual carrying out of this Act.

39. (1) The power to make rules conferred by Prior publication of section 37, *except clauses (k), (l) and (m) of sub-section (2) thereof*, and by section 38 is subject to the condition of the rules being made after previous publication.

(2) *The date to be specified in accordance with clause (3) of section 23 of the General Clauses X of 1897 Act, 1897, as that after which a draft of rules proposed to be made under sections 37 and 38 will be taken into consideration, shall not be less than three months from the date on which the draft of the proposed rules was published for general information.*

40. Rules made under this Chapter shall be published in the local official Gazette or the Gazette of India, as the case may be, and shall thereupon have effect as if enacted in this Act.

CHAPTER VIII.**PENALTIES AND PROCEDURE.**

Penalties. 41. *If in any factory—*

- (a) *any person is employed or allowed to work contrary to any of the provisions of this Act;*
- (b) *any of the provisions of section 9 are not complied with;*
- (c) *latrine or urinal accommodation in accordance with the provisions of section 13 is not provided;*
- (d) *a supply of water for the persons employed is not maintained in accordance with the provisions of section 14;*
- (e) *any door is constructed in contravention of section 15;*
- (f) *any machinery, mill-gearing, hoist, teagle or opening is not fenced as required by section 18, sub-sections (1) and (3);*
- (g) *any order of an inspector under section 10, section 11, section 12, section 16, or section 18 is not complied with;*
- (h) *the register prescribed by section 35 is not kept up to date;*
- (i) *any of the provisions of section 36 are not complied with;*
- (j) *any notice or return required by this Act or by rules made thereunder to be furnished is not furnished,* the occupier and manager shall be jointly and severally liable to a fine which may extend to two hundred rupees:

Provided that in cases where an appeal is allowed by section 50 no prosecution under clause (g) of this section shall be instituted until either the time prescribed by section 50 for

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the presentation of an appeal has expired or such appeal, if made, has been determined.

42. (1) Where the occupier or manager of a factory is charged with an offence against this Act, liability in certain cases. he shall be entitled upon complaint duly made by him to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge; and if after the commission of the offence has been proved, the occupier or manager of the factory proves to the satisfaction of the Court—

(a) that he has used due diligence to enforce the execution of this Act, and

(b) that the said other person committed the offence in question without his knowledge, consent or connivance,

that other person shall be convicted of the offence and shall be liable to the like fine as if he were the occupier or manager and the occupier or manager shall be discharged from any liability under this Act.

(2) When it is made to appear to the satisfaction of the Inspector, at any time prior to the institution of the proceedings,—

(a) that the occupier or manager of the factory has used all due diligence to enforce the execution of this Act, and

(b) by what person the offence has been committed, and

(c) that it has been committed without the knowledge, consent or connivance of the occupier, or manager, and in contravention of his orders,

the Inspector shall proceed against the person whom he believes to be the actual offender without first proceeding against the occupier or manager of the factory, and such person shall be liable to the like fine as if he were the occupier or manager.

43. Any person who—

Penalties for certain offences.

(a) wilfully obstructs an inspector in the exercise of any power under section 5, or fails to produce, on demand by an inspector, any registers or other documents kept in pursuance of this Act or the rules made thereunder, or conceals or prevents or attempts to prevent any person employed in a factory from appearing before or being examined by an inspector;

(b) smokes, or uses, a naked light or causes or permits any such light to be used, in the immediate vicinity of any inflammable material in contravention of section 17; or

(c) does or omits to do any other act prohibited or prescribed by this Act or any order or rule made thereunder,

shall be punishable with fine which may extend to two hundred rupees.

44. Any person who knowingly uses or attempts to use, as a certificate granted to himself under section 7 or section 8, a certificate granted to another person under either of those sections, or who, having procured such a certificate, knowingly allows it to be used, or an attempt to use it to be made, by another person, shall be punishable with fine which may extend to twenty rupees.

Limit to penalty in case of repetition of the same kind of offence.

45. A person shall not be liable in respect of a repetition of the same kind of offence from day to day to any larger amount of fines than the highest fine fixed by this Act for the offence, except

(a) where the repetition of the offence occurs after a prosecution has been instituted in respect of the original offence, or

(b) where the offence is one of employing or allowing to be employed two or more persons contrary to the provisions of this Act.

46. If a child over the age of six years is found inside any room or part of a factory in which room or part children are employed and in which any manufacturing process or work incidental to any manufacturing process is being carried on, he shall, until the contrary is proved, be deemed to be employed in the factory.

47. (1) When an act or omission would, if a person were under or over a certain age, be an offence punishable under this Act, and such person is in the opinion of the Court apparently under or over such age, it shall be on the accused to prove that such person is not under or over such age.

(2) A declaration in writing by a certifying surgeon that he has personally examined a person employed in a factory and believes him to be under or over the age set forth in such declaration shall, for the purposes of this Act, be admissible as evidence of the age of that person.

48. (1) No prosecution under this Act, except a prosecution under section 43, clause (b), shall be instituted except by or with the previous sanction of the inspector.

(2) No Court inferior to that of a Presidency Magistrate or of a Magistrate of the first class shall try any offence against this Act or any rule or order thereunder, other than an offence against section 43, clause (b).

49. No Court shall take cognizance of any offence against this Act or any rule or order thereunder, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

*The Indian Factories Bill.**(Chapter IX.—Supplemental Provisions.)***CHAPTER IX.****SUPPLEMENTAL PROVISIONS.**

50. (1) Any person on whom an order under Appeals. section 10, section 11, section 12, section 16 or section 18 has been served may, within fourteen days from the date of service of the order, appeal against such order to the Local Government or to such authority as it may appoint in this behalf, who may confirm, modify or reverse any such order.

(2) Where an inspector refuses to approve a system of shifts, he shall, if required by the manager of the factory, record his order of refusal with the reasons therefor, and the manager of the factory may, within fourteen days from the date of such order, appeal against it to the Local Government or to such authority as it may appoint in this behalf, who may confirm, modify or reverse any such order.

(3) In the case of any appeal under sub-section (1) the appellate authority may, and, if so requested by the appellant in the petition of appeal, shall, hear the appeal with the aid of two assessors, one of whom shall be appointed by the said authority and the other by such body representing the interest of the industry concerned as the Local Government may in this behalf prescribe.

Provided that if no assessor is appointed by such body within the prescribed period, or, if the assessor so appointed fails to attend at the time and place fixed for the hearing of the appeal, the said authority may proceed to hear the appeal without the aid of such assessor, or, if it thinks fit, without the aid of any assessor.

51. (1) In respect of any area in which the hours Special provision of the day are not ordinarily regarding computation by reckoned according to time. local mean time, the times and hours referred to in section 2, sub-section (8), section 26 and section 36 shall be reckoned according to the standard of time ordinarily observed in such area.

(2) The Local Government may, by notification in the local official Gazette, direct that, for any specified area and during any specified months, for the morning and evening hours mentioned in section 23, clause (b), section 24, clause (a), and section 29, such one of the following sets of morning and

evening hours, as it deems suitable, reckoned according to the standard of time ordinarily observed in such area, shall be substituted, namely : five o'clock in the morning and half past six o'clock in the evening ; six o'clock in the morning and half past seven o'clock in the evening ; half past six o'clock in the morning and eight o'clock in the evening ; seven o'clock in the morning and half past eight o'clock in the evening.

52. In computing the hours referred to in Computation of hours of employment. section 23, clause (c), section 24, clause (b), section 28 and section 32, any interval by which work is interrupted for half an hour or more shall be excluded.

53. The Local Government may, subject to the control of the Governor Power to declare General in Council, by parts of a factory to be special order in writing separate factories. direct, with respect to any factory or class of factories, that different branches or departments of work carried on in the same factory shall for all or any of the purposes of this Act be treated as if they were separate factories.

54. This Act shall apply to factories belonging to the Crown. Application to Crown factories.

55. In case of any public emergency, the Local Powers to exempt Government may, by an order in writing, exempt any from Act. factory from this Act to such extent and during such period as it thinks fit.

56. The Governor General in Council may, if Exercise of powers by Governor General in Council. he thinks fit, exercise any power which is by this Act conferred upon the Local Government.

57. No suit, prosecution or other legal proceeding shall lie against any persons acting under Act. person for anything which is in good faith done or intended to be done under this Act.

58. The Indian Factories Act, 1881, and the Indian Factories Act, 1891, XI of 1891. Repeal and savings. are hereby repealed :

Provided that all appointments made and all certificates given under the said Acts shall be deemed to have been made or given under this Act.

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(Schedule I.)

SCHEDULE I.

(See sections 21, 22, 30.)

PART A.

[See sections 21 (2), (3); 22 (3); 30.]

WORK OF AN URGENT NATURE OR SUCH AS IN THE INTERESTS OF EFFICIENCY IS COMMONLY PERFORMED WHILE THE MAIN MANUFACTURING PROCESS OF THE FACTORY IS DISCONTINUED.

- (a) Work by the supervising staff, clerks, watchmen or messengers.
- (b) Work in the mechanic shop, the smithy or foundry, the boiler-house, the engine-room or power-house, or in connection with the mill-gearing, the electric driving or lighting apparatus, mechanical or electrical lifts, or the steam or water pipes or pumps.
- (c) Work on the cleaning of [humidifying or ventilating apparatus, tunnels, blow-room flues or line-shaft alleys or of galleries in ginning factories.
- (d) Work by persons engaged in oiling, examining or repairing or in supervising or aiding in the oiling, examination or repair of any machinery or other thing whatsoever which is necessary for the carrying on of the work in a factory.

Explanation.—Periodical cleaning is not included in the terms "examining" or "repairing."

- (e) Work on the processes of packing, bundling or baling of finished articles or the receiving or despatching of goods.

PART B.

[See section 21 (2), (3).]

WORK NECESSITATING CONTINUOUS PRODUCTION FOR TECHNICAL REASONS IN THE FOLLOWING FACTORIES, NAMELY :

- Tanneries.
- Sugar refineries.
- Breweries.
- Distilleries.
- Mineral oil refineries.
- Oil mills.
- Cement works.
- Cloth-printing works.
- Bleaching and dyeing works.
- Carbonic acid gas works.
- Chemical works.
- Glass works.
- Paper mills.
- Shellac factories.
- Potteries.
- Blast furnaces, ore smelting works, or works for the manufacture of iron or steel or other metals.

PART C.

[See section 21 (2), (3).]

FACTORIES WHICH BY REASON OF THE EXIGENCIES OR THE SPECIAL CIRCUMSTANCES OF THE TRADE CARRIED ON THEREIN REQUIRE AN UNINTERRUPTED WORKING DAY, NAMELY

- Flour mills.
- Rice mills.
- Letter-press printing works.
- Dairies.
- Bakeries.
- Ice factories.
- The Mints.
- Gas works.
- Air-compressor stations.
- Water works or water supply pumping stations.

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(Schedule II.)

SCHEDULE II.

[See section 22.]

PART A.

[See section 22 (3), (4).]

WORK NECESSITATING CONTINUOUS PRODUCTION FOR TECHNICAL REASONS IN THE FOLLOWING FACTORIES, NAMELY :—

*Tanneries.**Sugar refineries.**Breweries.**Distilleries.**Mineral oil refineries.**Cement works,**Carbonic acid gas works.**Chemical works.**Glass works.**Shellac factories.**Potteries.**Blast furnaces, ore smelting works or works for the manufacture of iron or steel or other metals.*

PART B.

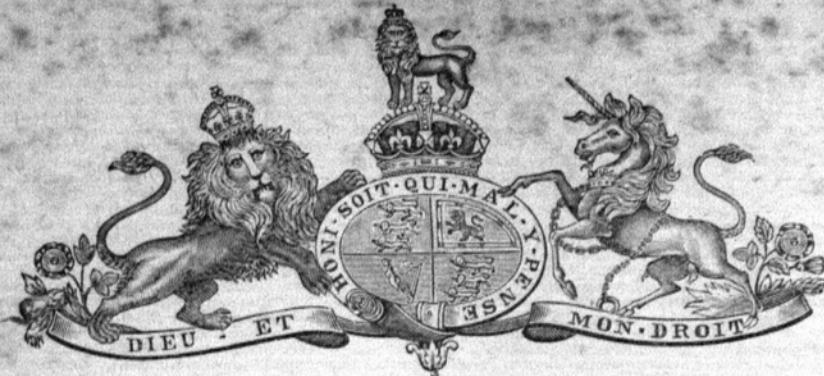
[See section 22 (3), (4).]

FACTORIES WHICH SUPPLY THE PUBLIC WITH ARTICLES OF PRIME NECESSITY WHICH MUST BE MADE OR SUPPLIED EVERY DAY, NAMELY :

*Ice Factories.**Dairies.**Bakeries.**Gas works.**Air-compressor stations.**Water works or water supply pumping stations.*

J. M. MACPHERSON,

Secretary to the Government of India.



The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 25, 1911.

 Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced in the Council of the Governor General of India for making Laws and Regulations, Reports of Select Committees presented to the Council, and Bills published under Rule 23.

GOVERNMENT OF INDIA. LEGISLATIVE DEPARTMENT.

NOTIFICATION.

Calcutta, the 24th February 1911.

No. 5.—The Governor General has been pleased, under rule 23 of the Rules for the conduct of the Legislative Business of the Council of the Governor General, to order the publication in the Gazette of India in English of the following Bill, together with the Statement of Objects and Reasons relating thereto, and the Bill and Statement of Objects and Reasons are accordingly hereby published for general information.

BILL NO. 1 OF 1911.

A Bill to amend the Indian Paper Currency Act, 1910.

WHEREAS it is expedient to amend the Indian Paper Currency Act, 1910; It is hereby enacted

I of 1910. as follows:—

1. This Act may be called the Indian Paper Currency (Amendment) Act, 1911.
Short title.

2. In section 22 of the Indian Paper Currency Amendment of sec. Act, 1910, for the words section 22, Act II, 1910. "twenty millions", each time they occur, the words "forty millions" shall be substituted.

STATEMENT OF OBJECTS AND REASONS.

THE portion of the Currency Reserve which may be invested was fixed at 12 crores of rupees in 1905. Since then the increase in the circulation of our Currency Notes has been so large and apparently so permanent that a further cautious addition to the invested part of the Reserve seems safe and advisable. The Bill takes power to raise the figure of 12 crores to 14 crores and permits of the additional investment being made in sterling securities if desired.

GUY FLEETWOOD WILSON:

The 23rd February 1911.

J. M. MACPHERSON,
Secretary to the Government of India



The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 4, 1911.

 Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced in the Council of the Governor General of India for making Laws and Regulations, Reports of Select Committees presented to the Council, and Bills published under Rule 23.

GOVERNMENT OF INDIA. LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 1st March 1911:—

NO. 2 of 1911.

A Bill further to amend the Indian Tariff Act, 1894.

WHEREAS it is expedient further to amend the Indian Tariff Act, 1894; It is hereby enacted as follows:—

1. This Act may be called the Indian Tariff (Amendment) Act, 1911.

2. For item No. 5 of Schedule III to the Amendment of Indian Tariff Act, 1894, Schedule III, Act VIII, as amended by the Indian Tariff (Amendment) Act, 1910, the following shall be substituted, namely:—

			<i>R. a.</i>
“ 5	Tobacco—		
	Unmanufactured . . .	pound	1 0
	Cigars . . .	”	1 10
	Cigarettes weighing less than 3 lbs. per thousand.	thousand	3 2
	Cigarettes weighing 3 lbs. or more per thousand.	pound	1 4
	Manufactured, other sorts	”	1 2”

STATEMENT OF OBJECTS AND REASONS.

THE new duties which were imposed upon tobacco a year ago have not realized the revenue which was expected from them, and it is considered probable that a somewhat lower range of duties would be more productive. The Bill accordingly provides for a reduction, by about one-third all round, in the existing rates upon tobacco of all classes.

G. FLEETWOOD WILSON.

The 1st March 1911.

J. M. MACPHERSON,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

NO. 3 OF 1911.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 1st March 1911 :—

A Bill further to amend the Births, Deaths and Marriages Registration Act, 1886.

WHEREAS it is expedient further to amend the Births, Deaths and Marriages Registration Act, VI of 1886. It is hereby enacted as follows :—

1. This Act may be called the Births, Deaths and Marriages Registration Short title. (Amendment) Act, 1911.

2. In section 22 of the Births, Deaths and Marriages Registration Amendment of section 22 of Act VI of Act, 1886, the following VI of 1886. amendments shall be made, namely :—

(1) To sub-section (1) of the said section the following proviso shall be added, namely :—

“ Provided that it shall not be necessary for the person giving notice to attend before the Registrar or to sign the entry in the register if he has given such notice in writing and has furnished to the satisfaction of the Registrar such evidence of his identity as may be required by any rules made by the Local Government in this behalf.”

(2) In sub-section (2) of the said section, after the word “ signed ” the words “ or the conditions specified in the proviso to sub-section (1) have been complied with ” shall be inserted.

3. In section 26 and in section 28 of the said Amendment of sections 26 and 28. Act, for the words “ Governor General in Council ” the words “ Local Government ” shall be substituted.

4. For section 36 of the said Act the following Substitution of new section shall be substituted, namely :—

“ 36. (1) The Local Government may make rules to carry out the purposes of this Act.

Rules. (2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) fix the fees payable under this Act ;
- (b) prescribe the forms required for the purposes of this Act ;
- (c) prescribe the time within which, and the mode in which, persons authorized under this Act to give notice of a birth or death to a Registrar of Births and Deaths must give the notice ;
- (d) prescribe the evidence of identity to be furnished to a Registrar of Births and Deaths by persons giving notice of a birth or death in cases where personal attendance before such Registrar is dispensed with ;
- (e) prescribe the registers to be kept and the form and manner in which Registrars of Births and Deaths are to register births and deaths under this Act, and the intervals at which they are to send to the Registrar General of Births, Deaths and Marriages true copies of the entries of births and deaths in the registers kept by them ;
- (f) prescribe the conditions and circumstances on and in which Registrars of Births and Deaths may correct entries of births and deaths in registers kept by them ;
- (g) prescribe the particulars which the descriptive list or lists to be prepared by the Commissioners appointed under Chapter V are to contain, and the manner in which they are to refer to the registers or records, or portions of registers or records, to which they relate ; and
- (h) prescribe the custody in which those registers or records are to be kept.
- (3) Every power to make rules conferred by this Act is subject to the condition of the rules being made after previous publication.
- (4) All rules made under this Act shall be published in the local official Gazette, and on such publication shall have effect as if enacted in this Act.
- 5. Section 37 of the said Act is hereby repealed.
- Repeal of section 37.
- 6. All rules heretofore made under the said Act by the Governor General Continuation of rules heretofore made by Governor General in Council shall, after the commencement of this Act, be deemed to have been made by the Local Government.

STATEMENT OF OBJECTS AND REASONS.

It has been represented to the Government of India that the provisions of the Births, Deaths and Marriages Registration Act, 1886 (VI of 1886), are not as freely resorted to as would otherwise be the case owing to the fact that the personal attendance before the Registrar of a person giving notice of a birth or death is required by section 22 of that Act. It is proposed therefore to amend section 22 so as to allow notice of a birth or death to be given in writing, subject to precautions to secure the identification of the person giving the notice.

2. The Government of India consider that such precautions should be left to rules to be framed by Local Governments, and opportunity has also been taken in making this amendment to delegate to Local Governments the general rule-making power under the Act.

S. H. BUTLER.

The 22nd February, 1911.

J. M. MACPHERSON,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 1st March 1911 :—

NO. 4 OF 1911.

A Bill to amend the Indian Universities Act, 1904.

WHEREAS it is expedient to amend the Indian Universities Act, 1904; It is hereby enacted as follows :—

1. This Act may be called the Indian Universities (Amendment) Act, 1911.
Short title.

2. To section 6, sub-section (2), of the said Act the following proviso shall be added, namely :—

“ Provided that, in the case of the University of Allahabad, the Chancellor may direct that such number as he may specify of the ordinary Fellows referred to in clause (a) shall be elected by the Senate, and the remainder by registered Graduates.”

STATEMENT OF OBJECTS AND REASONS.

Section 6, sub-section (2), clause (a), of the Indian Universities Act, 1904 (VIII of 1904), provides that ten of the Ordinary Fellows of the Universities of the Punjab and Allahabad shall be elected by the Senate or by registered graduates. At present the Senate of the latter University elects ten Ordinary Fellows. It is desired to divide the election of these Fellows between the Senate and the registered graduates, in the case of the Allahabad University.

S. H. BUTLER.

The 22nd February 1911.

J. M. MACPHERSON,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 1st March 1911:—

NO. 5 OF 1911.

A Bill to amend the Law relating to Co-operative Societies.

WHEREAS it is expedient to amend the law relating to Co-operative Societies; It is hereby enacted as follows:—

Preliminary.

1. (1) This Act may be called the Co-operative Societies Act, 1911; and Short title and Societies Act, 1904, s. 1.] extent.

(2) It extends to the whole of British India.

2. In this Act, unless there is anything repugnant in the subject or con- Definitions. text,—

(a) "by-law" means a by-law made by a registered society in the exercise of any power conferred by or under this Act:

(b) "committee" means the governing body of a registered society to whom the management of its affairs is entrusted:

(c) "member" includes a person joining in the application for the registration of a society and a person admitted to membership after registration in accordance with the by-laws and any rules made under this Act:

(d) "officer" includes a chairman, secretary, treasurer, member of committee, or other person empowered under the rules applying to any registered society or the by-laws thereof to give directions in regard to the business of the society:

(e) "registered society" means a society registered or deemed to be registered under this Act: and

(f) "Registrar" means a person appointed to perform the duties of a Registrar of Co-operative Societies under this Act.

Registration.

3. The Local Government may appoint a person to be Registrar of Co-operative Societies for the Province or any portion of it, and may appoint persons to assist such Registrar, and may, by general or special order, confer on any such persons all or any of the powers of a Registrar under this Act.

4. Subject to the provisions hereinafter contained, a society which has Societies which may be registered. as its object the encouragement and development of the economic interests of its members by means of operations in common, may be registered under this Act with or without limited liability:

Provided that—

(1) the liability of a society of which the object is the creation of funds to be lent to members, and of which the majority of the members are agriculturists, shall be unlimited, unless the Local Government by special order otherwise directs;

(2) where the liability of the members of a society is limited by shares, no member other than a registered society, shall—

(a) hold more than such portion of the share capital of the society, subject to a maximum of one-fifth, as may be prescribed by any rules made under this Act; or

(b) have or claim any interest in the shares of the society exceeding one thousand rupees.

5. (1) No society, other than a society all the members of which are registered societies, shall be registered under this Act which does not consist of at least ten persons above the age of eighteen years and, in a case where the object of the society is the creation of funds to be lent out to the members of the society, unless such persons—

(a) reside in the same town or village or in the same group of villages; or,

(b) save where the Registrar otherwise directs, are members of the same tribe, class, caste or occupation.

(2) When any question arises whether for the purposes of this Act a person is an agriculturist or a non-agriculturist, or whether any person is a resident in a town or village or group of villages, or whether two or more villages shall be considered to form a group, or whether any person belongs to any particular tribe, class, caste or occupation, the question shall be decided by the Registrar, whose decision shall be final.

(3) The word "limited" shall be the last word in the name of every society with limited liability registered under this Act.

6. For purposes of registration an application to register signed—

(a) in the case of a society governed by section 5, sub-section (1), by ten or more persons qualified in accordance with the requirements of that sub-section, or

(b) in the case of a society all the members of which are registered societies, by a duly authorized person on behalf of each of such registered societies, shall be made to the Registrar, and the persons by whom or on whose behalf such application is made shall furnish such information in regard to the society as the Registrar may require.

7. If the Registrar is satisfied that a society has registered. [Ib., s. 6] complied with the provisions of this Act and with the rules made thereunder as to registration, he may, if he thinks fit, register the society.

8. A certificate of registration signed by the Registrar shall be conclusive evidence that the society therein mentioned is duly registered unless it is proved that the registration of the society has been cancelled.

Rights and liabilities of members.

[Act X of 1904, proviso to s. 4.]

9. No member of a registered society shall

Member not to exercise rights till due payment made. exercise the rights of a member unless or until he has made such payment to the society in respect of membership, or acquired such interest in the society, as may be prescribed by the rules made under this Act or the by-laws of the society.

[Act X of 1904, s. 13.]

10. (1) Where the liability of the members of a registered society is not limited by shares, each member shall, notwithstanding the amount of his interest in the capital, have one vote only as a member in the affairs of the society.

(2) Where the liability of the members of a registered society is limited by shares, each member shall have as many votes as may be prescribed by the by-laws of the society.

(3) A registered society which has invested any part of its capital in the shares or on the security of any other registered society may appoint as its proxy, for the purpose of voting in the affairs of such other registered society, any one of its members.

[Ib., s. 14.] 11. (1) A member shall not transfer any share held by him or his interest in the capital of a registered society or any part thereof, unless he has held such share or interest for not less than one year.

(2) The transfer or charge of the share or interest of a member in the capital of a registered society shall be subject to such conditions as to maximum holding as may be prescribed by or under this Act or by the by-laws of the society.

(3) No such transfer or charge shall be made save to the society or to a member of the society.

Duties of registered societies.

[Ib., s. 6(3).] 12. Every registered society shall have an address, registered in accordance with the rules made under this Act, to which all notices and communications may be sent, and shall send to the Registrar notice of every change thereof.

[Ib., s. 27(5).] 13. Every registered society shall keep a copy of the rules relating to such laws to be open to inspection at all reasonable times in force, open to inspection at all reasonable times free of charge at the registered address of the society.

[Ib., s. 21.] 14. (1) Every registered society shall once at least in every year submit its accounts for audit to the Registrar or some person authorized by him in this behalf.

(2) The audit under sub-section (1) shall include an examination of overdue debts, if any, and a valuation of the assets and liabilities of the society; and, if the person auditing is not the Registrar, the audit shall be passed by the Registrar.

(3) The Registrar, the Collector or any person authorized in this behalf by the Registrar or the Collector, shall at all times have access to all the books, accounts, papers and securities of a society, and every officer of the society shall furnish such information in regard to the transactions and working of the society as the person making such inspection may require.

Privileges of registered societies.

15. The registration of a society shall render [Act X of it a body corporate by the 1904, s. 6(2).] Societies to be bodies name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute and defend civil suits and to do all things necessary for the purposes of its constitution.

16. Subject to any prior claim of the Government in respect of land-revenue or any money recoverable as land-revenue or of a landlord in respect of rent or any money recoverable as rent, a registered society shall be entitled in priority to other creditors to enforce any outstanding demand due to the society from a member or from a person who has ceased to be a member—

- (a) in respect of the supply of seed or manure or of the loan of money for the purchase of seed or manure—upon the crops or other agricultural produce of such member or person at any time within eighteen months from the date of such supply or loan;
- (b) in respect of the supply of cattle, agricultural or industrial implements or raw materials for manufacture, or of the loan of money for the purchase of any of the foregoing things—upon any such things so supplied, or purchased in whole or in part from any such loan, or on any articles manufactured from raw materials so supplied or purchased.

17. A registered society shall have a charge [Ib., s. 20.] upon the shares or interest in the capital and on the deposits of a member or past member and upon any dividend, bonus or profits payable to a member or past member in respect of any debt due from such member or past member to the society, and may set-off any sum credited or payable to a member or past member in or towards payment of any such debt.

18. Subject to the provisions of section 17, the [Ib., s. 15.] Shares or interest share or interest of a member not liable to attachment in the capital of a registered society shall not be liable

to attachment or sale under any decree or order of a Court of Justice in respect of any debt or liability incurred by such member, and neither the Official Assignee under the Presidency-towns III of 1909. Insolvency Act, 1909, nor a Receiver appointed III of 1907. under the Provincial Insolvency Act, 1907, shall be entitled to or have any claim on such share or interest.

[Act X of 1904, s. 16.] **19.** On the death of a member, a registered society may pay to or Transfer of interest on death of member. transfer to the credit of the person nominated, in accordance with the rules made in this behalf, or, if there is no person so nominated, of such person as may appear to the Committee to be entitled to receive the same as heir or legal representative of the deceased member, a sum representing the value of such member's share or interest, as ascertained in accordance with the rules or by-laws and all moneys due to him from the society, and the society shall thereupon be absolved from all liability in respect of such share or interest or other moneys as aforesaid.

[Ib., s. 17.] **20.** The liability of a past member for the debts of a registered society Liability of past member. as they existed at the time when he ceased to be a member shall continue for a period of one year from the date of his ceasing to be a member.

[Ib., s. 18.] **21.** The estate of a deceased member shall be liable for a period of one year from the time of his death for the debts of a registered society as they existed at the time of his decease.

[Cf. section 84, Industrial and Provident Societies Act.] **22.** Any register or list of members or shares kept by any registered society shall be *prima facie* evidence of any of the following particulars entered therein:—

- (a) the date at which the name of any person was entered in such register or list as a member;
- (b) the date at which any such person ceased to be a member.

23. A copy of any entry in a book of a registered society regularly kept Proof of entries in societies' books. in the course of business, shall, if certified in such manner as may be prescribed by rules made under this Act, be received, in any suit to recover a debt due to the society, as *prima facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is admissible.

[Act X of 1904, s. 25.] **24.** The Governor General in Council, by Power to exempt from income-tax, stamp-duty and registration-fees. notification in the Gazette of India, may, in the case of any registered society or class of registered society, remit—

- (a) the income-tax payable in respect of the profits of the society, or of the dividends

or other payments received by the members of the society on account of profits;

- (b) the stamp-duty with which, under any law for the time being in force, instruments executed by or on behalf of a registered society or by an officer or member and relating to the business of such society, or any class of such instruments, are respectively chargeable;
- (c) any fee payable under the law of registration for the time being in force.

Property and funds of registered societies.

25. (1) A registered society shall not make a loan to any person other than a member:

Provided that, with the sanction of the Registrar, a society may make loans to another registered society.

(2) Save with the sanction of the Registrar, a society with unlimited liability shall not lend money on the security of moveable property.

(3) The Local Government may, by general or special order, prohibit or restrict the lending of money on mortgage of immoveable property by any registered society or class of registered societies.

[Ib., s. 11.] **26. (1)** A registered society may invest its funds—

- (a) in the Government Savings Bank, or
- (b) in any of the securities specified in section 20 of the Indian Trusts Act, 1882, or
- (c) in the shares or on the security of any other registered society, or
- (d) with any banker or person acting as a banker approved for this purpose by the Registrar, or
- (e) in any other mode permitted by any rules made under this Act.

(2) Any investments made before the commencement of this Act which would have been valid if this Act had been in force are hereby ratified and confirmed.

[Ib., s. 9.] **27.** A registered society shall only receive deposits and loans from persons who are not members, to such extent and under such conditions as may be provided by its by-laws or by rules made under this Act.

[Ib., s. 3.] **28.** No part of the funds of a registered society shall be divided by way of profit, bonus or dividend or otherwise among its members:

Provided that after one-fourth of the profits in any year have been carried to a reserve fund

V of 1908.

(3) Subject to any rules of procedure made under this Act, a liquidator appointed under this section shall, in so far as such powers are necessary for carrying out the purposes of this section, have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and (so far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908.

(4) Where an appeal from any order made by a liquidator under this section is provided for by any rules made under this Act, it shall lie to the Court of the District Judge.

(5) Orders made under this section may be enforced as follows:—

- (a) when made by a liquidator, by any Civil Court having local jurisdiction in the same manner as the decree of such Court;
- (b) when made by the Court of the District Judge on appeal, in the same manner as a decree of such Court made in any suit pending therein.

(6) Save in so far as is hereinbefore expressly provided, no Civil Court shall have any jurisdiction in respect to any matter connected with the dissolution of a registered society under this Act.

Rules.

[Act X of
1904, s. 27.]

37. (1) The Local Government may, for the whole or any part of the Province and for any registered society or class of such societies, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe the forms to be used in applying for the registration of a society and the procedure in the matter of such applications;
- (b) prescribe the conditions to be complied with by persons applying for registration and by persons applying for admission or admitted as members, and provide for the election and admission of members, and the payment to be made and the interests to be acquired before the exercise of the right of membership;
- (c) provide for the withdrawal and expulsion of members and for the payments to be made to members who withdraw or are expelled and for the liabilities of past members;

- (d) provide for the mode in which the value of a deceased member's interest shall be ascertained, and for the nomination of a person to whom such interest may be paid or transferred;
- (e) subject to the provisions of section 4, sub-section (2), prescribe the maximum number of shares or portion of the capital of a society which may be held by a member;
- (f) prescribe the payments to be made and the conditions to be complied with by members applying for loans, the period for which loans may be made, and the amount which may be lent, to an individual member;
- (g) prescribe the proportion to the total liabilities to be attained by the reserve fund and the rate to which interest on loans to members is to be reduced, before profits may be distributed to the members of a society with unlimited liability;
- (h) regulate the manner in which capital may be raised by means of shares or debentures or otherwise;
- (i) provide for general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings;
- (j) provide for the appointment, suspension and removal of the members of the committee and other officers, and for the procedure at meetings of the committee, and for the powers to be exercised and the duties to be performed by the committee and other officers;
- (k) prescribe the matters in respect of which a society may or shall make by-laws, and for the procedure to be followed in making, altering and abrogating by-laws, and the sanction to be required to such making, alteration or abrogation;
- (l) prescribe the accounts and books to be kept by a society and provide for the audit of such accounts and the charges, if any, to be made for such audit, and for the periodical publication of a balance-sheet showing the assets and liabilities of a society;
- (m) prescribe the returns to be submitted by a society to the Registrar and provide for the persons by whom and the form in which such returns shall be submitted;
- (n) provide for the persons by whom and the form in which copies of entries in books of societies may be certified;

- (o) provide for the formation and maintenance of a register of members and, where the liability of the members is limited by shares, of a register of shares;
- (p) provide for the rate at which interest may be paid on deposits, for the formation and maintenance of reserve funds, and the objects to which such funds may be applied, and for the investment of any funds under the control of the society;
- (q) provide that any dispute touching the business of a society between members or past members of the society or persons claiming through a member or past member or between a member or past member or persons so claiming and the committee or any officer shall be referred to the Registrar for decision, or, if he so directs, to arbitration, and prescribe the mode of appointing an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or such arbitrator or arbitrators, and the enforcement of the decisions of the Registrar or the awards of arbitrators;
- (r) prescribe the conditions to be complied with by a society applying for the financial assistance of Government;
- (s) determine in what cases an appeal shall lie from the orders of the Registrar and prescribe the procedure to be followed in presenting and disposing of such appeals; and
- (t) prescribe the procedure to be followed by a liquidator appointed under section 36, and the cases in which an appeal shall lie from the order of such liquidator.

(5) The Local Government may delegate, subject to such conditions, if any, as it thinks fit, all or any of its powers to make rules under this section to any authority specified in the order of delegation.

(4) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication.

(5) All rules made under this section shall be published in the local official Gazette and on such publication shall have effect as if enacted in this Act.

Miscellaneous.

38. (1) All sums due from a registered society [Act X of 1904, s. 26.]
Recovery of sums or from an officer or member due to Government or past member of a registered society as such to the Government, including any costs awarded to the Government under section 32, may be recovered in the same manner as arrears of land-revenue.

(2) Sums due from a registered society to Government and recoverable under sub-section (1) may be recovered, firstly, from the property of the society; secondly, in the case of a society of which the liability of the members is limited, from the members subject to the limit of their liability; and, thirdly, in the case of other societies, from the members.

39. Notwithstanding anything contained Power to exempt in this Act, the Local societies from conditions. Government may, by special order in each case and subject to such conditions, if any, as it may impose, exempt any society from any of the requirements of section 5, sub-section (1).

40. The Local Government may, by general or Power to exempt special order, exempt any registered societies from registered society from provisions of the Act. any of the provisions of this Act or may direct that such provisions shall apply to such society with such modifications as may be specified in the order.

41. The provisions of the Indian Companies [Act X of 1904, s. 28.]
Indian Companies Act, 1882, shall not apply VI of 1882.
Act, 1882, not to apply to registered societies.

42. Every society now existing which has been Saving of existing registered under the Co-operative Credit Societies X of 1904. societies. Act, 1904, shall be deemed to be registered under this Act, and its by-laws shall, so far as the same are not inconsistent with the express provisions of this Act, continue in force until altered or rescinded.

43. The Co-operative Credit Societies Act, X of 1904. Repeal. 1904, is hereby repealed.

STATEMENT OF OBJECTS AND REASONS.

WHEN the Bill, which subsequently became the Act of 1904, was published, the following remarks were made in the Statement of Objects and Reasons :—"Legislation is called for not only in order to lay down the fundamental conditions which must be observed, but also with a view to giving such societies a corporate existence without resort to the elaborate provisions of the Companies Act; but it is thought that legislation should be confined within the narrowest possible limits. The Bill has, therefore, been drawn so as to deal only with those points which the Government consider to be essential, and its provisions have been expressed in simple and general terms, a wide rule-making power being reserved to Local Governments, so that what is felt to be of the nature of an experiment may be tried in each province or part of a province on such lines as seem to afford most promise of success": and these principles were followed in the Act as passed.

2. The adequacy of the existing Act was examined at a conference of Registrars of Co-operative Credit Societies in 1909, and it was held that the Act still remained in many ways unduly restricted, and that it also required certain alterations in detail which had been suggested by experts since 1904. The Conference of Registrars drew up proposals for the amendment of the Act, and after consulting Local Governments on these proposals the Government of India have prepared the Bill now published. The chief changes contemplated by the Government of India are four in number :—

- (i) The Act of 1904 applies to Societies for the purpose of co-operative credit only and not to Co-operative Societies of other kinds, such as those established for production or distribution. It has in practice been found that the establishment of Credit Societies has led to the founding of other classes of Co-operative Societies also, and it is advisable that the privileges extended by the Act to Co-operative Credit Societies should be extended to these other Societies. It is proposed therefore that the Act as now revised should be made applicable to all classes of Co-operative Societies—*vide* clause 1 (1) and clause 4 of the Bill.
- (ii) In the Act of 1904 Societies were classified according as they were "Urban" or "Rural" and the principle was laid down that as a general rule rural societies should be with unlimited liability. This basis for distinction was adopted, mainly because it represented a classification which had already been recommended and put in force in the initiation of Co-operative Credit Societies in certain parts of India, but it was at the time criticised as unsuitable by experts, and it has in practice been found artificial and inconvenient. The real distinction is between Societies with limited and those with unlimited liability, and it is proposed in the new Bill to maintain this distinction only while retaining the principle that agricultural Credit Societies must as a general rule be with unlimited liability—see clause 4 of the Bill.
- (iii) The Act of 1904 did not contemplate that Societies with unlimited liability should distribute profits. It is still felt that such Societies do not represent the best form of co-operation for agricultural communities, but this form of Society has, in practice, been for some time in existence in several provinces, and Societies of this character, though not of the orthodox type, are recognized to be capable of useful work. Although therefore it is not intended to give them undue encouragement, it is proposed to legalize their existence and to permit an unlimited Society, with the sanction of the Local Government, to distribute profits—see clause 28 of the Bill.
- (iv) A cardinal principle which is observed in the organization of Co-operative Societies in Europe is the grouping of such Societies into Unions and their financing by means of Central Banks. This stage of co-operation had not been fully realised or provided for in the Act of 1904, but such grouping of Societies has already been found feasible in most provinces, and it is now considered desirable to legalize the formation of Co-operative Credit Societies of which the Members shall be other Co-operative Credit Societies—*vide* clauses 5 (1), 6 and 10 (3) of the Bill.

3. In addition to carrying out the main alterations above described the present Bill contains the several changes of detail and it has been found advisable to recast the Bill in order to improve the drafting and to incorporate the changes now contemplated. The chief alterations, other than those above referred to, are the following :—

Clause 3.—It is proposed to make provision for investing in persons, other than Registrars, the power of a Registrar.

Clause 5.—It is proposed to maintain the existing restrictions as to residence or class as obligatory before registration in the case of Credit Societies and to render the existence of ten Members obligatory before registration in the case of all kinds of Co-operative Societies other than those all the members of which are themselves

registered Societies. It is proposed further to give the Registrar the power of decision as to the residence qualification and to place persons of the same occupation on the same footing as persons of the same tribe or class.

Clause 8.—The provision giving conclusive authority to the Registrar's certificate of registration is new.

Clause 14.—It is proposed by this clause to give the Registrar power to conduct an audit by deputy. The previous provision that no charge should be made for audit has been omitted.

Clause 16.—It is proposed to extend from one year to 18 months the term of lien on agricultural products and to permit a lien on articles manufactured from raw materials supplied by, or with the help of, a registered Society.

Clauses 22 and 23 are based on provisions in the English Industrial and Provident Societies Act. Clause 22 makes the register of members *prima facie* evidence of the date of commencement and cessation of membership, and clause 23 provides for proof of entries in the books of a registered Society.

Clause 26.—This clause so far as it allows registered Societies to invest in good securities and validates investments made prior to the amendment of the law now suggested is new.

Clause 27.—It is now proposed to make it clear that a registered Society is not precluded from receiving deposits from non-members.

Clause 29.—The provision allowing contributions to charities is new.

Clause 30.—The existing provisions have been altered so as to allow a Registrar to conduct an enquiry by deputy.

Clause 31.—The provision allowing a creditor to require an inspection is new. It is based on a similar provision in the Companies Act.

Clause 35.—The provision allowing the Registrar to cancel registration when the number of members becomes less than ten is new.

Clause 37.—Sub-clauses 2 (m) and (t) and 3 are new. The two former allow the Local Government to prescribe returns and the procedure on liquidation, and the latter permits of the delegation of the powers of the Local Government.

Clauses 39 and 40.—The existing section 29 has been recast with a view to making clear the distinction in the power of exemption of the Local Government before and after registration.

R. W. CARLYLE.

The 26th February, 1911.

J. M. MACPHERSON,
Secretary to the Government of India,

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 1st March 1911 :—

NO. 6 OF 1911.

A Bill to amend the Special Marriage Act, 1872.

WHEREAS it is expedient to amend the Special Marriage Act, 1872; It is hereby enacted as follows :—

1. This Act may be called the Special Marriage Act, 1872. (Amendment) Act, 1911.
2. That the words commencing with "who do not profess," and ending with "Jaina religion" occurring in the preamble to the Special

Marriage Act, 1872, be omitted, and in lieu thereof the following words be substituted, namely, "intend marriage under the provisions of this Act."

3. That in section 2 of the said Act the words commencing with "neither of whom," and ending with "Jaina religion" be omitted, and the following words be substituted, namely, "who intend marriage under the provisions of this Act."
4. That in the Declarations to be made by the bridegroom and the bride in the Second Schedule to the said Act, the words in clause 2 be omitted, and in lieu thereof the following words and figures be substituted, namely :— "I intend marriage under the provisions of the Special Marriage Act, 1872, as amended by the Special Marriage (Amendment) Act, 1911."

STATEMENT OF OBJECTS AND REASONS.

THE Special Marriage Act of 1872 applies to persons who do not profess any of the recognised religions of India and a declaration has to be made by the parties contracting marriage that they do not profess any such religion. This declaration, which is a negation of faith in all the religious systems of India, has been felt to be an unnecessary condition by the community for whose benefit the Act was specially intended.

The provisions of the Act, moreover, cannot be availed of by those members of the Hindu community who desire to introduce intermarriage between different sub-sections of the same caste or between members of the same caste inhabiting different provinces of India. Such intermarriages have not taken place for a very considerable time. Marriage customs observed by the same caste of Hindus in different parts of India vary sometimes considerably, and intermarriages are difficult as people naturally feel great hesitation in contracting marriages the validity of which may be open to question. Under the law as it stands at present, intermarriage between members of different castes of the Hindus is of extremely doubtful validity, if not an absolute nullity. The necessity for a simple law of marriage wholly optional and which may be supplemented by the religious rites observed by the contracting parties is greatly felt by those who do not desire to break away from Hinduism and at the same time seek to adapt their life to the growing needs of the times.

BHUPENDRA NATH BASU.

The 16th February 1911.

J. M. MACPHERSON,
Secretary to the Government of India.



The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 18, 1911.

 Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced in the Council of the Governor General of India for making Laws and Regulations, Reports of Select Committees presented to the Council, and Bills published under Rule 23.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 16th March 1911:—

NO. 7 OF 1911.

[NOTE.—The marginal references are to the sections of the Prevention of Seditious Meetings Act, 1907. Amendments proposed are printed in italics.]

A Bill to consolidate and amend the law relating to the prevention of public meetings likely to promote sedition or to cause a disturbance of public tranquillity.

WHEREAS it is expedient to consolidate and amend the law relating to the prevention of public meetings likely to promote sedition or to cause a disturbance of public tranquillity; It is hereby enacted as follows:—

1. (1) This Act may be called the Prevention of Seditious Meetings Act, Short title and extent. 1911.

(2) It extends to the whole of British India, but shall have operation only in such Provinces as the Governor General in Council may from time to time notify in the Gazette of India.

2. (1) The Local Government may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, declare the

[s. 2.]

whole or any part of a Province, in which this Act is for the time being in operation, to be a proclaimed area.

(2) A notification made under sub-section (1) shall not remain in force for more than six months, but nothing in this sub-section shall be deemed to prevent the Local Government, with the previous sanction of the Governor General in Council, from making any further notifications in respect of the same area from time to time as it may think fit.

3. (1) In this Act, the expression "public meeting" means a meeting which is open to the public or any class or portion of the public.

[s. 3, sub-s. 8, omitted.]

(2) A meeting may be a public meeting notwithstanding that it is held in a private place and notwithstanding that admission thereto may have been restricted by ticket or otherwise.

4. (1) No public meeting for the furtherance

Notice to be given of or discussion of any subject [s. 4, with the omission of likely to cause disturbance the words "or public meetings." or public excitement or for of any political the exhibition or distribution of any writing or ~~or~~ subject.]

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on 16th March 1911:—

NO. 8 OF 1911.

A Bill to make better provision for the extension of elementary education.

WHEREAS it is expedient to make better provision for the extension of elementary education; It is hereby enacted as follows:—

1. (1) This Act may be called the Elementary Education Act, 1911. [Short title, commencement and extent.]

(2) It shall come into force on [], but it shall not be operative except in the local areas to which it may be applied by a notification issued under section 3.

(3) It extends to the whole of British India.

Definition.

2. In this Act, unless there is anything repugnant in the subject or context,—

“Parent” includes the guardian and every person who is liable to maintain or has the actual custody of any child:

“Department of Public Instruction” means the Department in charge of public instruction under the Local Government of the province in which the Municipality or District Board concerned is situated:

“recognised school” means a school recognised by the Department of Public Instruction:

“elementary education” means the courses in reading, writing and arithmetic and other subjects, if any, prescribed from time to time by the Department of Public Instruction for elementary schools:

“District Board” includes a “District Local Board” and a “District Council”:

“Magistrate” does not include a “village Magistrate.”

3. Every Municipality or District Board may from time to time, with the notification of compulsory education areas, previous sanction of the Local Government, and subject to such rules as the Governor General in Council may make in this behalf, by notification declare that this Act shall apply to the whole or any specified part of the area within the local limits of its authority and the provisions of this Act shall apply to such area or part accordingly.

4. In every area, to which this Act applies, it shall be the duty of the parent of every boy, not under six and not over ten years of age, residing within such area, to cause such boy to attend a recognised school for elementary education for so many days in the year and for such time on each day of attendance as may be prescribed by the Department of Public Instruction, unless there is a reasonable excuse for the non-attendance of the boy.

5. Any of the following circumstances is a non-attendance when reasonable excuse for non-attendance is excusable:

(a) that there is no recognised school within a distance of one mile, measured along the nearest road, from the residence of the boy, which the boy can attend, and to which the parent has no objection, on religious grounds, to send the boy;

(b) that the child is prevented from attending school by reason of sickness, infirmity, domestic necessity, the seasonal needs of agriculture, or other sufficient cause;

(c) that the child is receiving instruction in some other satisfactory manner.

6. No person shall take into his employment any boy who ought to be at school under this Act.

[Irish Education Act, 1892, sec. 2 (1); Elementary Education Act (England and Wales), 1876, sec. 5.]

Prohibition of child's employment.

7. For every area to which this Act applies, the Municipality or District Board shall provide such school accommodation as the Department of Public Instruction considers necessary and sufficient.

8. In any such area as aforesaid, the Municipality or District Board may levy a special education rate. Local Body may levy a special education rate, the proceeds of which shall be devoted exclusively to the provision of elementary education for the boys residing in the area.

9. (1) No fee shall be charged in respect of the instruction of a boy required to attend school under section 4 if the monthly income of the parent does not exceed Rs. 10.

(2) In every other case, the Municipality or District Board may, on the ground of poverty, or for other sufficient reason, remit the whole or any part of the fee payable by a parent on account of his boy required to attend school under section 4.

10. (1) For every area to which this Act applies, the Municipality or District Board shall appoint a school attendance committee, to be constituted in such manner as may be prescribed by bye-laws framed in that behalf.

[Irish Education Act, 1892, sec. 3 (1).]

(2) It shall be the duty of the school attendance committee, subject to bye-laws framed in that behalf, to secure the attendance of every boy within its area that ought to be at school.

[Irish Education Act, 1892, sec. 4 (1).]

11. (1) Whenever the school attendance committee is satisfied that a parent.

Complaint against parent.

boy in its area that

ought to attend school does not do so, it may,

after due warning, make a complaint against

the parent of the boy before a magistrate.

(2) The magistrate shall, if satisfied of the

truth of the complaint, issue

Attendance order.

an order directing the

parent to cause the boy to attend school before a

certain date.

[Irish Education Act, 1892, sec. 4 (2).]

12. (1) If such order is not complied with and

the school attendance committee does not see any

satisfactory cause for the non-compliance, it may

prosecute the defaulting parent before a magistrate.

(2) The parent shall be liable, on conviction,

Penalty for non-compliance with attendance order.

to a fine not exceeding rupees two.

(3) In cases of repeated non-compliance, the

Penalty for repeated non-compliance.

parent shall, on conviction,

be liable to a fine not exceeding

rupees ten.

[Irish Education Act, 1892, sec. 5 and 6.]

14. (1) The school attendance committee may,

Employer's liability.

after due warning, prosecute

any employer who violates

the provisions of section 6.

(2) Unless such employer is able to satisfy the magistrate that there is no recognised school within a distance of one mile, measured along the nearest road, from the residence of the boy, or

that the time and nature of the boy's employment are such that he is not prevented from receiving elementary education at school, or

that the boy is receiving instruction in some other satisfactory manner, or

that the boy was employed under false representations as to age, residence and other conditions, or

without his knowledge and consent by an agent or workman under him for whose prosecution he is willing to afford the necessary facilities,

he shall, on conviction, be liable to a fine not exceeding rupees twenty.

15. When the act of taking a boy into employment in contravention of this Act is in fact committed by an agent or workman of the employer, that agent or workman shall be liable to the same penalty, in the same manner, and subject to the same conditions as if he were the employer.

16. The Local Government may exempt particular classes or communities from the operation of this Act.

17. In any area in respect of which a notification has been issued under section 3, the Municipality or District Board may, with the previous sanction of the Governor-General in Council, make in this behalf, by notification declare that the foregoing provisions relating to boys, shall, from a date to be specified in the notification, apply also in the case of girls residing within such area, and the said provisions shall apply in the case of girls accordingly.

18 (1) The Governor-General in Council may make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the fixing of the percentage of boys, or of girls that should be at school in an area before a notification in respect thereof may be issued under section 3 or section 17, as the case may be; and

(b) the prescribing of the proportions in which the cost of providing elementary education under this Act should be divided between the Municipality or District Board and the Local Government, as the case may be.

(3) The power to make rules under this section shall be subject to the condition of the rules being made after previous publication.

19. A Municipality or District Board may, with the previous sanction of the Local Government, make bye-laws prescribing—

(a) the manner in which the school attendance committee should be constituted, the number of its members, their duties and their mode of transacting business.

(b) the steps which the school attendance committee may take to secure the attendance of children at school.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to provide for the gradual introduction of the principle of compulsion into the elementary education system of the country. The experience of other countries has established beyond dispute the fact that the only effective way to ensure a wide diffusion of elementary education among the mass of the people is by a resort to compulsion in some form or other. And the time has come when a beginning at least should be made in this direction in India. The Bill is of a purely permissive character and its provisions will apply only to areas notified by Municipalities or District Boards, which will have to bear such proportion of the increased expenditure, which will be necessitated, as may be laid down by the Government of India by rule. Moreover no area can be notified without the previous sanction of the Local Government, and further it must fulfil the test which the Government of India may, by rule, lay down, as regards the percentage of children already at school within its limits. Finally the provisions are intended to apply in the first instance only to boys, though later on a Local Body may extend them to girls; and the age limits proposed are only six and ten years. It is hoped that these are sufficient safeguards against any rash or injudicious action on the part of Local Bodies. The measure is essentially a cautious one—indeed, to some, it may appear to err too much on the side of caution.

The provisions of the Bill are based largely on the Irish Education Act of 1892 and the English Education Acts of 1870 and 1876.

Clauses 1 and 2 call for no remark.

Clause 3 provides for the application of the provisions of the Bill to notified areas.

Clause 4 imposes on the parent or guardian of a boy in a notified area, between the ages of six and ten the obligation to cause him to attend a recognised elementary school in the absence of a reasonable excuse, and clause 5 lays down what circumstances may constitute a reasonable excuse.

Clause 6 prohibits the employment by employers of labour, of a boy who should be at school under the provisions of the Bill.

Clause 7 requires Municipalities and District Boards to provide sufficient school accommodation in a notified area, and clause 8 empowers them, subject to the previous sanction of the Local Governments, to levy a special education rate.

Clause 9 provides for the exemption of poor parents and guardians from the payment of school fees for their boys.

Clause 10 provides for the appointment of school attendance committees in notified areas.

Clauses 11 to 15 provide penalties and the proceedings to be taken for their enforcement in the case of parents and guardians, failing without reasonable excuse to cause their boys to attend school, as required by the Bill, and of employers and their agents or workmen, acting in contravention of the provisions of the Bill.

Clause 16 enables the Local Government to exempt particular classes or communities from the operation of the Bill.

Clause 17 provides for the extension of the provisions of the Bill to girls between the ages of six and ten.

Clauses 18 and 19 provide for the making of rules by the Government of India and of bye-laws by Local Bodies.

G. K. GOKHALE.

The 28th February 1911.

J. M. MACPHERSON,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on 17th March 1911 :—

NO. 9 OF 1911.

A Bill to Define the rights of the Mussulman subjects of His Majesty to make settlements of property by way of wakf in favour of their families and descendants.

WHEREAS doubts have arisen regarding the validity of *wakfs* or settlements created by persons professing the Mussulman faith in accordance with the laws and customs as permanent benefactions for themselves, their families and descendants with an ultimate reversion in favour of the general body of the poor or for other religious, pious or charitable purposes; and whereas it is expedient to remove such doubts and define the limits within which such *wakfs* may validly be created; It is hereby enacted as follows :—

1. (1) This Act may be called the Mussulman Short title. Wakf Validating Act, 1911.

(2) It extends to the whole of British India.

2. In this Act, unless there is something repugnant in the subject or context,—

(1) "will" means the legal declaration of the intentions of the testator which he desires to take effect after his death :

(2) "signed" applies to the affixing of a mark :

(3) "registered" means registered in British India under the law for the time being in force regulating the registration of documents :

(4) "Registrar" means the officer appointed by the Local Government for the purpose of registering documents :

(5) "minor" means any person who shall not have attained the age of majority under the Indian Majority Act, 1875 :

IX of 1875.

(6) "immoveable property" includes lands and buildings, hereditary allowances and all rights and benefits arising out of land :

(7) "moveable property" includes stocks, shares, securities and actionable claims as defined in the Transfer of Property Act, 1882, and property of IV of 1882. every description except immoveable property :

(8) "wakf" means the dedication or settlement by a person professing the Mussulman faith of any property, moveable or immoveable, for any purpose regarded as religious, pious or charitable by the Mussulman law, and implies a permanent relinquishment of all proprietary right therein :

(9) "wakif" means the person making such dedication or settlement :

(10) "wakfnama" means the instrument by which the dedication or settlement is purported to be effected :

(11) "mutwalli" means a person who is appointed for the administration of a *wakf* ; and

(12) "a Hanafi Muhammadan" means a follower of the Mussulman faith who conforms to the tenets and doctrines of the Hanafi School of Mussulman law.

3. Subject to the provisions of this Act, it shall be lawful for any person professing the Power to create *wakfs*. Mussulman faith, not being a minor or of unsound mind, to create a *wakf* for among others the following purposes :—

- (a) for the maintenance and support, wholly or partially, of his family, his children and descendants ; and
- (b) where the *wakif* is a Hanafi Mussulman, for his own support and maintenance during his lifetime or for the payment of his debts out of the rents and profits of the property dedicated :

Provided always that the ultimate reversion is, in such cases, expressly or impliedly reserved for the poor, or for some other religious, pious or charitable purpose of a permanent character.

4. No *wakf* intended to take effect in the lifetime of the *wakif* shall be lawful for any person professing the Power to create *wakfs*.

Invalidity of certain *wakfs*. writing signed by the person purporting to create the *wakf*, and attested by two or more witnesses and registered as hereinafter provided.

5. Every such *wakfnama* shall be presented for registration in accordance with the provisions of the law in force for the time being within four months from the date of its execution ; and if the registering officer is satisfied that the requirements of this Act with reference thereto have been duly complied with, he shall register the same, and the *wakf* shall come into operation retrospectively from the date of its execution.

6. To every *wakfnama* presented for registration there shall be attached—

- (a) a schedule containing a full specification of the property or properties intended to be comprised in the *wakf*, with a statement of the value thereof to the best of the executant's knowledge and belief ;
- (b) a schedule of any other property owned by him and the value thereof to the best of his knowledge and belief ;
- (c) a schedule of any charge or charges by way of mortgage or otherwise created by him on the property intended to be comprised in the

wakf, or by any person through or under whom he derives title thereto, and any decree or decrees outstanding against him or such persons in execution of which such property is liable to be sold.

7. (1) If the Registrar is satisfied upon the When registration to aforesaid documents, which shall be verified be performed. according to law, or upon such further evidence as for the purpose herein-mentioned he may require to be produced before him, that the other charges and decrees (if any) mentioned in section 6 do not cover the entire property intended to be comprised in the *wakf* or that the other property of the *wakif* is sufficient in his opinion to satisfy those charges and decrees, he shall record a finding to that effect and forthwith register the *wakfnama*.

(2) For the purposes of the inquiry under this section it shall be lawful for the Registrar to examine the executant and witnesses on oath or affirmation, and the provisions of the Indian Registration Act, 1908, regarding the enforcing of ^{XVI of 1908.} their appearance shall be applicable to all such proceedings.

8. If the Registrar finds upon inquiry that Refusal to register. the said charges or decrees, if any, exceed the value of the property intended to be dedicated, and that the *wakif* has no other property to satisfy such liabilities, he shall refuse to register the document and record his reasons therefor.

9. In case of such refusal an appeal shall lie from the order of the Appeal. Registrar to the officer authorized by law to hear appeals from such orders if presented within thirty days from the date thereof ; and such officer may alter or reverse such order or make any other order that he considers just under the circumstances.

10. Where a *wakf* is intended to take effect after the death of the *wakif*, it shall be constituted by a will in writing signed by him and attested by two or more witnesses.

11. Such will may be presented for registration either by the testator or by the person claiming to act as executer or mutwalli or beneficiary thereunder ; and the provisions of Part VIII of the Indian Registration Act, 1908, and of sections 6 and 7 of this Act shall be applicable to all proceedings for obtaining the registration of such will.

12. The penalties provided under the Indian Registration Act, 1908, for offences thereunder ^{XVI of 1908.} shall apply to offences committed under this Act.